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भारत का राजपत्र
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सं. 5] नई दिल्ली, शनिवार, फरवरी 1, 2003/माघ 12, 1924
No. 5] NEW DELHI, SATURDAY, FEBRUARY 1, 2003/MAGHA 12, 1924

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notification Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 22 जनवरी, 2003

का.आ. 351.—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री सी. सहाय, अधिवक्ता, दिल्ली को मुख्य न्यायिक मजिस्ट्रेट, भोपाल, मध्य प्रदेश के न्यायालय में मामला सं. आरसी. 3/84 (एस)/एसीयू-1/सीबीआई/नई दिल्ली, के.अ. ब्यूरो बनाम वारेन एंडरसन, पूर्व अध्यक्ष, यूनियन कार्बाइड कारपोरेशन, संयुक्त राज्य अमेरिका एवं अन्य तथा उससे सम्बद्ध अथवा आनुषंगिक किसी अन्य मामले के अभियोजन का संचालन करने के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं. 225/26/2002-ए.वी.डी.-II]
शुभा ठाकुर, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 22nd January, 2003

S.O. 351.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal procedure, 1973 (Act No.2 of 1974), the Central Government hereby appoints Shri C. Sahay, Advocate of Delhi as Special Public Prosecutor for conducting prosecution of the case No. RC.3/84(S)/ACU-1/CBI/New Delhi, CBI V/s. Warren Anderson, former Chairman, Union Carbide Corporation, USA and others in the Court of Chief Judicial Magistrate, Bhopal, Madhya Pradesh and any other matter connected therewith or incidental thereto.

[No. 225/26/2002-AVD-II]
SHUBHA THAKUR, Under Secy.

नई दिल्ली, 22 जनवरी, 2003

का.आ. 352.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए ओपी (एचसी) 23395/2001 में माननीय केरल उच्च न्यायालय के दिनांक 29-10-2001 के आदेश के अनुसार भारतीय दंड संहिता की धारा 363 के अधीन दंडनीय अपराधों और चेंगनचेरी पुलिस स्टेशन, केरल राज्य के अपराध संख्या 547/2001 से संबंधित अथवा संसक्त प्रयत्नों दुष्प्रेरणों और षड़यंत्रों तथा उसी संव्यवहार के अनुक्रम में किए गए उन्हीं तथ्यों से उद्भूत अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण केरल राज्य पर करती है।

[सं. 228/1/2003-ए.वी.डी.-II]
शुभा ठाकुर, अवर सचिव

New Delhi, the 22nd January, 2003

S.O. 352.—In exercise of the powers conferred by Sub-section (1) of Section 5 of the Delhi Special Police Establishment Act, 1946 (Act. No. 25 of 1946), the Central Government as per the Order dated 29-10-2001 of the Hon'ble High Court of Kerala in OP (HC) 23395/2001 hereby extends the powers and jurisdiction of the members of Delhi Special Police establishment to the whole of the State of Kerala for investigation of offences punishable under Section 363 IPC and attempt, abetment and conspiracy in relation to or in connection with the offences committed in the course of the same transaction or arising out of the same facts of Crime No.547/2001 of Chenganacherry Police Station, Kerala State.

[No. 228/1/2003 AVD-II]
SHUBHA THAKUR, Under Secy.

आदेश

नई दिल्ली, 22 जनवरी, 2003

का.आ. 353.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए जम्मू, कश्मीर सरकार के गृह विभाग के दिनांक 19-12-2002 के आदेश संख्या एसआरओ 514 द्वारा प्राप्त जम्मू कश्मीर की सहमति से दिल्ली विशेष पुलिस के सदस्यों की शक्तियों और अधिकारिता का विस्तार धारा 120-बी, आर.पी.सी. 307 आर.पी.सी. 364, आर.पी.सी. 302 आर.पी.सी. 201 आर.पी.सी. तथा धारा 7/25 आयुद्ध अधिनियम के अन्वेषण हेतु करती है।

तथा उक्त अपराधों से संबंधित या उनसे संसक्त किन्हीं प्रयत्नों से दुष्प्रेषणों और षडयंत्रों के अन्तर्गत अपराधों के बारे जिला अनंतनाग जम्मू कश्मीर में दर्ज निम्न (4) चार आपराधिक मामलों के संबंध मे वैसे ही संव्यवहार के अनुक्रम में लिये गये कार्य इत्यादि पर भी यही प्रक्रिया लागू होगी।

1. थाना अच्छाबल जिला अनंतनाग की धारा 307 आर.पी.सी. 7/25 आयुद्ध अधिनियम, अपराध संख्या 15/2000.
2. थाना अच्छाबल जिला अनंतनाग की धारा 364 आर.पी.सी. 7/25 आयुद्ध अधिनियम, अपराध संख्या 16/2000.
3. थाना अनंतनाग जिला अनंतनाग की धारा 364/302/201/120 बी आर.पी.सी. अपराध संख्या 98/2000.
4. थाना अनंतनाग जिला अनंतनाग की धारा 364/302/201/120 बी आर.पी.सी. अपराध संख्या 99/2000.

[सं. 228/54/2002-ए.वी.डी.-II]
शुभा ठाकुर, अवर सचिव

ORDER

New Delhi, the 22nd January, 2003

S.O. 353.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Jammu and Kashmir, Home Department vide Notification No.SRO 514 dated 19th December, 2002, hereby extends the powers and jurisdiction of the members of Delhi Special Police Establishment to the whole of the State of Jammu and Kashmir for investigation of (1) FIR No. 15/2000 under section 307 of the Ranbir Penal Code and section 7 and section 25 of Arms Act of Police Station Achhabal, (2) FIR No. 16/2000 under section 364 of the Ranbir Penal Code and section 7 and section 25 of Arms Act of Police Station Achhabal, (3) FIR No. 98/2000 under sections 364, 302, 201 of the Ranbir Penal Code of Police Station Anantnag, (4) FIR No. 99/2000 under sections 364, 302, 201 of the Ranbir Penal Code of Police Station Anantnag, and attempts abetments and conspiracy in relation to or in connection with such offences and any other offences comitted in the course of same transaction or arising out of the same fact or facts.

[No. 228/54/2002-AVD-II]
SHUBHA THAKUR, Under Secy.

वित्त एवं कम्पनी कार्य मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 24 दिसम्बर, 2002

स्टाम्प

का.आ. 354.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतदद्वारा भारतीय औद्योगिक विकास बैंक, मुम्बई को मात्र पांच करोड़ उन्नीस लाख सत्तानबे हजार चार सौ पचास रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त बैंक द्वारा जारी किए जाने वाले, मात्र पांच सौ उन्नीस करोड़ सत्तानबे लाख पैंतालीस हजार रुपये के समग्र मूल्य के प्रोमिसरी नोटों के स्वरूप में आईडीबीआई फ्लैक्सी बंधपत्रों-15 (930946 बंधपत्र भौतिक रूप में तथा 109003 बंधपत्र डीमेटिअरालइज रूप में) के रूप में वर्णित बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभार्य है।

[सं. 56/2002-स्टाम्प/फा.सं. 33/79/2002-बि.क.]
आर. जी. छाबड़ा, अवर सचिव

MINISTRY OF FINANCE & COMPANY AFFAIRS

(Department of Revenue)

ORDER

New Delhi, the 24th December, 2002

STAMPS

S.O. 354.—In exercise of the powers conferred by clause (b) of Sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Industrial Development Bank of India, Mumbai to pay consolidated stamp duty of rupees five crore nineteen lakh ninety seven thousand four hundred fifty only chargeable on account of the stamp duty on bonds described as IDBI Flexibonds-15 (930946 bonds in physical form and 109003 bonds in dematerialised form) in the nature of promissory notes aggregating to rupees five hundred

nineteen crore ninety seven lakh forty five thousand only, to be issued by the said Bank.

[No. 56/2002/Stamp/F.No. 33/79/2002-ST]

R.G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 27 दिसम्बर, 2002

स्टाम्प

का.आ. 355.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा महाराष्ट्र राज्य वित्त निगम, मुम्बई को मात्र चार लाख बीस हजार रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है जो उक्त निगम द्वारा जारी किए गए मात्र पांच करोड़ साठ लाख रुपये के समग्र मूल्य के ऋणपत्रों के स्वरूप वाले 8.30 प्रतिशत एमएसएफसी बंधपत्रों 2012 (79वीं श्रृंखला) पर स्टाम्प शुल्क के कारण प्रभार्य है।

[सं. 57/2002-स्टाम्प/फा.सं. 33/80/2002-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 27th December, 2002

STAMPS

S.O. 355.—In exercise of the powers conferred by clause (b) of Sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Maharashtra State Financial Corporation, Mumbai to pay consolidated stamp duty of rupees four lakh twenty thousand only chargeable on account of the stamp duty on 8.30% MSFC Bonds 2012 (79th Series) in the nature of Debentures aggregating to rupees five crore sixty lakh only issued by the said Corporation.

[No. 57/2002-Stamps/F. No. 33/80/2002-ST]

R. G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 27 दिसम्बर, 2002

स्टाम्प

का.आ. 356.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा ओरियंटल बैंक ऑफ कॉमर्स, नई दिल्ली को मात्र अस्सी लाख रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है जो उक्त बैंक द्वारा 22-10-2002 को आवंटित मात्र दो सौ करोड़ रुपये के समग्र मूल्य के दस-दस लाख रुपये प्रत्येक के 001 से 2000 तक की विशिष्ट संख्या वाले प्रोमिसरी नोटों स्वरूप के वाले असुरक्षित विमोच्य बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभार्य है।

[सं. 58/2002-स्टाम्प/फा.सं. 33/81/2002-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 27th December, 2002

STAMPS

S.O. 356.—In exercise of the powers conferred by clause (b) of Sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Oriental Bank of Commerce, New Delhi to pay consolidated stamp duty of rupees eighty lakh only chargeable on account of the stamp duty on Unsecured Redeemable Bonds in the nature of promissory notes bearing distinctive numbers from 001 to 2000 of rupees ten lakh each aggregating to rupees two hundred crore only allotted on 22-10-2002 by the said Bank.

[No. 58/2002-Stamps/F. No. 33/81/2002-ST]

R. G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 27 दिसम्बर, 2002

स्टाम्प

का.आ. 357.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा पॉवर फाइनेंस कॉरपोरेशन लिमिटेड, नई दिल्ली को मात्र तीन करोड़ पिचहत्तर लाख रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है जो उक्त कॉरपोरेशन द्वारा 3-10-2002 और 13-11-2002 को आवंटित मात्र पांच सौ करोड़ रुपये के समग्र मूल्य के ऋणपत्रों के स्वरूप वाले 8.21 प्रतिशत असुरक्षित विमोच्य अपरिवर्तनीय हस्तांतरणीय कराधेय बंधपत्रों (2017)-XVII श्रृंखला तथा 7.87 प्रतिशत असुरक्षित विमोच्य अपरिवर्तनीय हस्तांतरणीय कराधेय बंधपत्रों (2017)-XVIII श्रृंखला पर स्टाम्प शुल्क के कारण प्रभार्य है।

[सं. 59/2002-स्टाम्प/फा. सं. 33/82/2002-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

ORDERS

New Delhi, the 27th December, 2002

STAMPS

S.O. 357.—In exercise of the powers conferred by clause (b) of Sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Power Finance Corporation Limited, New Delhi to pay consolidated stamp duty of rupees three crore seventy five lakh only chargeable on account of the stamp duty on 8.21% Unsecured redeemable Non-Convertible Transferable Taxable Bonds (2017)-XVII Series and 7.87% Unsecured redeemable Non-Convertible transferable taxable Bonds(2017)-XVIII Series in the nature of Debentures aggregating to rupees five hundred crore only allotted on 3-10-2002 and 13-11-2002, by the said Corporation.

[No. 59/2002-Stamps/F.No. 33/82/2002-ST]

R. G. CHHABRA, Under Secy.

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 10 जनवरी, 2003

का.आ. 358.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2002-2003, 2003-2004 और 2004-2005 के लिए नीचे पैरा 3 में उल्लिखित उद्यमों/औद्योगिक उपक्रम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

(I) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा,

(II) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/औद्योगिक उपक्रम :—

(क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है; और

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है; अथवा

(ग) आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/औद्योगिक उपक्रम है :—

भारत के राष्ट्रपति, तमिलनाडु के राज्यपाल और आवेदक कम्पनी के बीच दिनांक 3-10-1997 के त्रिपक्षीय करार के अनुसार मैसर्स एल एंड टी ट्रान्सपोरटेशन इंफ्रास्ट्रक्चर लि. चैन्नई को उनकी एन एच-47 पर 28 कि.मी. कोयम्बटूर बाई पास की डिजाईन निर्माण, रख-रखाव और प्रचालन एवं नोयल नदी पर एक अतिरिक्त दो लेन वाले पुल की परियोजना हेतु।

[अधिसूचना सं. 11/2003/फा. सं. 205/66/1998/आयकर नि-II/खंड-I]

संगीता गुप्ता, निदेशक (आयकर नि-II)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 10th January, 2003

S.O. 358.—It is notified for general information that enterprise/industrial undertaking, listed at para (3) below has been approved by the Central Government for the purpose of section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2002-2003, 2003-2004 and 2004-2005.

2. The approval is subject to the condition that :—

(i) the enterprise/industrial undertaking will conform to and comply with the provisions of section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Incomne-tax Rules, 1962;

(ii) the Central Govemment shall withdraw this approval if the enterprise/industrial undertaking :—

(a) ceases to carry on infrastructure facility; or

(b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax rules, 1962.

3. I the enterprise/industrial undertaking approved is :—

M/s L &T Transportation Infrastructure Limited, Chennai for their project of design, construction, maintenance and operation of 28 Km. Coimbatore Bypass on NH-47 and an additional two lane bridge across river Noyyal as per tripartite agreement dated 3-10-1997 between The President of India, The Governor of Tamilnadu and the applicant company.

[Notification No. 11/2003/F.No.205/66/1998/ITA.II/Vol.I]

SANGEETA GUPTA, Director (ITA.II)

आदेश

नई दिल्ली, 22 जनवरी, 2003

का.आ. 359.—अत: संयुक्त सचिव, भारत सरकार जिन्हें विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अन्तर्गत विशेष रूप से शक्ति प्रदान की गई है, ने उक्त उप-धारा के अधीन आदेश फाइल सं. 673/60/2002-सी.यू.एस. VIII, दिनांक 12-12-2002 को जारी किया और यह निर्देश दिया कि श्री राजीव वधवा, सुपुत्र श्री सुभाष चन्द्र वधवा, निवासी 14/32, तीसरी मंजिल, पूर्वी पटेल नगर, नई दिल्ली को निरूद्ध कर लिया जाए और केन्द्रीय कारागार, तिहाड़, नई दिल्ली में अभिरक्षा में रक्षा जाए ताकि उन्हें भविष्य में चीजों की तस्करी में अवप्रेरित होने से रोका जा सके।

2. अत: केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या स्वयं को छिपा रखा है जिससे यह आदेश निष्पादित नहीं किया जा सकता।

3. अत: अब उक्त अधिनियम की धारा 7 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा पूर्वोक्त व्यक्ति को यह निर्देश देती है कि वह शासकीय राजपत्र

में इस आदेश के प्रकाशित होने के 7 दिन के भीतर पुलिस आयुक्त, दिल्ली के सम्मुख उपस्थित हो।

[फा. सं. 673/60/2002-सी.यू.एस.-VIII]

वी. के. खन्ना, अवर सचिव (कोफेपोसा)

ORDER

New Delhi, the 22nd January, 2003

S.O. 359.—Whereas the Joint Secretary to the Government of India, specially empowered under Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F.No. 673/60/2002-Cus.VIII, dated 12-12-2002 under the said Sub-section directing that Shri Rajiv Wadhwa S/o Shri Subash Chander Wadhwa, R/o 14/32, IIIrd Floor, East Patel Nagar, New Delhi be detained and kept in custody in the Central Jail, Tihar, New Delhi with a view to preventing him from abetting the smuggling of goods in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order connot be executed.

3. Now, therefore, in exercise of the powers conferred by Clause (b) of Sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Delhi within 7 days of the publication of this order in the Official Gazette.

[F.No. 673/60/2002-Cus.VIII]

V. K. KHANNA, Under Secy. (COFEPOSA)

आदेश

नई दिल्ली, 22 जनवरी, 2003

का.आ. 360.—अत: संयुक्त सचिव, भारत सरकार जिन्हें विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अन्तर्गत विशेष रूप से शक्ति प्रदान की गई है, ने उक्त उप-धारा के अधीन आदेश फाइल सं. 673/59/2002-सी.यू.एस.VIII, दिनांक 12-12-2002 को जारी किया और यह निर्देश दिया कि श्री कृष्ण कुमार गुप्ता सुपुत्र स्वर्गीय कंवर सैन गुप्ता, निवासी ए-1/3, सत्यवती कॉलोनी, अशोक विहार, फेस-III, दिल्ली-110052 को निरूद्ध कर लिया जाए और केन्द्रीय कारागार, तिहाड़, नई दिल्ली में अभिरक्षा में रखा जाए ताकि उन्हें भविष्य में चीजों की तस्करी करने से रोका जा सके।

2. अत: केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या स्वयं को छिपा रखा है जिससे यह आदेश निष्पादित नहीं किया जा सकता।

3. अत: अब उक्त अधिनियम की धारा 7 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए केन्द्रीय सरकार एतदद्वारा पूर्वोक्त व्यक्ति को यह निर्देश देती है कि वह शासकीय राजपत्र में इस आदेश के प्रकाशित होने के 7 दिन के भीतर पुलिस आयुक्त, दिल्ली के सम्मुख उपस्थित हो।

[फा. सं. 673/59/2002-सी.यू.एस.-VIII]

वी. के. खन्ना, अवर सचिव (कोफेपोसा)

ORDER

New Delhi, the 22nd January, 2003

S.O. 360.—Whereas the Joint Secretary to the Government of India, specially empowered under Sub-section (1) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/59/2002-Cus.VIII, dated 12-12-2002 under the said sub-section directing that Shri Krishan Kumar Gupta S/o Late Shri Kanwar Sain Gupta, R/o A-1/3, Satyawati Colony, Ashok Vihar, Phase-III, Delhi-110052 be detained and kept in custody in the Central Jail, Tihar, New Delhi with a view to preventing him from smuggling goods in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order connot be executed.

3. Now, therefore, in exercise of the powers conferred by clause (b) of Sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Delhi within 7 days of the publication of this order in the Official Gazette.

[F.No. 673/59/2002-Cus.VIII]

V.K. KHANNA, Under Secy. (COFEPOSA)

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 16 जनवरी, 2003

का.आ. 361.—राष्ट्रीयकृत बैंक (प्रबन्ध एवं प्रकीर्ण उपबंध) स्कीम, 1970 के खण्ड 3 के उपखण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उपधारा 3 के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा नीचे दी गई सारणी के कालम (1) में निर्दिष्ट व्यक्तियों को तत्काल प्रभाव से तथा अगले आदेश तक के लिए उक्त सारणी के कालम (3) में निर्दिष्ट बैंक के स्थान पर कालम (2) में निर्दिष्ट राष्ट्रीयकृत बैंक का निदेशक नामित करती है।

सारणी

1	2	3
श्री पी. एम. सिराजुद्दीन, संयुक्त सचिव, वित्त एवं कंपनी कार्य मंत्रालय, आर्थिक कार्य विभाग, बैंकिंग प्रभाग, नई दिल्ली।	पंजाब नैशनल बैंक	युनाइटेट बैंक ऑफ इंडिया

[फा. सं. 9/3/2002-बीओ-I]

रमेश चन्द, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 16th January, 2003

S.O. 361.—In exercise of the powers conferred by clause (b) of Sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with sub-clause (1) of clause 3 of the nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, hereby nominate the person specified in column (1) of the Table below as Director of the bank specified in column (2) thereof in place of the bank specified in column (3) of the said Table, with immediate effect and until further orders :—

TABLE

1	2	3
Shri P. M. Sirajuddin, Joint Secretary, Ministry of Finance and Company Affairs, Department of Economic Affairs, Banking Division, New Delhi.	Punjab National Bank	United Bank of India

[F. No. 9/3/2002-B.O.-I]

RAMESH CHAND, Under Secy.

नई दिल्ली, 22 जनवरी, 2003

का.आ. 362.—भारतीय लघु उद्योग विकास बैंक अधिनियम, 1989 (यथा संशोधित) की धारा 6(1) (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, वर्तमान में बैंक ऑफ बड़ौदा के महाप्रबंधक श्री एन. बालासुब्रह्मणियन को भारतीय लघु उद्योग विकास बैंक में 22050-500-24050 रुपए के वेतनमान में पूर्ण कालिक निदेशक (उप प्रबंध निदेशक के रूप में नामित) के रूप में पदभार ग्रहण करने की तारीख से 30-9-2006 तक अथवा अगले आदेश होने तक, जो भी पहले हो, के लिए नियुक्त करती है।

[फा. सं. 24(2) 2002-आई एफ-I]

एम. के. मल्होत्रा, अवर सचिव

New Delhi, the 22nd January, 2003

S.O. 362.—In exercise of the powers conferred by Section 6 (1) (b) of the Small Industries Development Bank of India Act, 1989 (as amended) the Central Government hereby appoints Shri N. Balasubramanian, presently General Manager, Bank of Baroda as a whole time Director (designated as Deputy Managing Director) in the pay scale of Rs. 22050-500-24050 in Small Industries Development Bank of India from the date he assumes the charge of the post and upto 30-9-2006 or until further orders whichever is earlier.

[F. No. 24 (2) 2002-IF-1]

M. K. MALHOTRA, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 22 जनवरी, 2003

का.आ. 363.—केन्द्रीय सरकार, भारतीय दंत चिकित्सा परिषद् से परामर्श करने के पश्चात्, दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए, एतद्द्वारा उक्त अधिनियम की अनुसूची के भाग I में निम्नलिखित संशोधन करती है, नामत :

अनुसूची के भाग I में क्रम संख्या 47 तथा उससे संबंधित प्रविष्टियों के पश्चात् निम्नलिखित प्रविष्टियां जोड़ी जाएंगी, नामत:

	बेचलर आफ डेंटल सर्जरी	बी.डी.एस.
47. राजीव गांधी युनिवर्सिटी ऑफ हेल्थ साइंसेज, बैंगलोर	निम्नलिखित दंत चिकित्सा कालेजों के बी.डी.एस. छात्रों के संबंध में दंत चिकित्सा अर्हताएं तभी मान्यताप्राप्त अर्हताएं होंगी यदि ये 31-12-2001 को अथवा इसके बाद प्रदान की गई हो : (1) गवर्नमेंट डेंटल कालेज, बैंगलोर (2) बापूजी डेंटल कालेज एंड हास्पिटल, दावनगिरी (3) के.एल. ई. सोसाइटी डेंटल कालेज, बेलगांव (4) ए.बी. शेट्टी मेमोरियल इंस्टीट्यूट आफ डेंटल साइंसेज, मंगलोर (5) जगदगुरू श्री शिवराठरूएसवर डेंटल कालेज एंड हास्पिटल, मैसूर (6) एस.डी.एम. कालेज आफ डेंटल साइंसेज, धवलगारा, धारवाड़ (7) एस. जे.एम. डेंटल कालेज एंड हास्पिटल, चित्रदुर्ग	राजीव गांधी यूनिवर्सिटी आफ हैल्थ साइंसेज, बैंगलोर।

बेचलर आफ डेंटल सर्जरी	बी.डी.एस.
(8) एच.के.ई. सोसाइटी डेंटल कालेज, गुलबर्ग	
(9) वी.एस. डेंटल कालेज, बैंगलोर	
(10) एम.आर.ए. डेंटल कालेज, बैंगलोर	
(11) पी.एम. नादगुड़ा डेंटल कालेज एंड हास्पिटल, बागलकोट	
(12) कालेज आफ डेंटल साइंसेज, दावनगिरी	
(13) के.बी.जी. डेंटल कालेज एंड हास्पिटल, सुलिया	
(14) येनेपोया डेंटल कालेज, मंगलौर	
(15) बैंगलोर इंस्टीट्यूट आफ डेंटल साइंसेज एंड हास्पिटल, बैंगलोर	
(16) दयानंद सागर कालेज आफ डेंटल साइंसेज, बैंगलोर	
(17) श्री हसनम्ब डेंटल कालेज एंड हास्पिटल, हसन	
(18) एम.एस. रमैया डेंटल कालेज , बैंगलोर	
(19) के.जी.एफ. कालेज आफ डेंटल साइंसेज, कोलार गोल्ड फील्ड्स	
(20) एस.बी. पाटिल इंस्टीट्यूट फार डेंटल साइंसेज एंड रिसर्च, बीदर	
(21) एल. अमीन डेंटल कालेज, बीजापुर	
(22) डा. स्यामला रेड्डी डेंटल कालेज, बैंगलौर	
(23) एच.के.डी.ई.टी. डेंटल कालेज एंड हास्पिटल, हुम्नाबाद	
(24) अल-बदर रूरल डेंटल कालेज एंड हास्पिटल, गुलबर्ग	
(25) ए.एम.ई. डेंटल कालेज, रायपुर	

[सं. वी. 12018/1/2002-पी एम एस]

एस. के. राव, निदेशक (एम.ई.)

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 22nd January, 2003

S.O. 363.—In exercise of the power conferred by sub-section (2) of Secion 10 of the Dentists Act, 1948 (16 of 1948), the Central Governnment, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, nemely :—

In Part I of the Schedule against Serial Number 47, and the entries relating thereto, the following entries shall be added, namely :—

	Bachelor of Dental Surgery	**BDS**
47. Rajiv Gandhi University of Health Sciences, Bangalore	The dental qualification shall be recognized qualifications in respect of BDS students of the following dentals college if granted on or after 31-12-2001 : (1) Govt. Dental College, Bangalore (2) Bapuji Dental College and Hospital, Davangere (3) KLE Society's Dental College, Belgaum (4) A.B. Shetty Memorial Instt. of Dental Sciences, Mangalore (5) Jagdguru Shri Shivarathruaswara Dental College and Hospital, Mysore (6) SDM College of Dental Sciences, Dhavalanagara, Dharwad (7) S.J.M. Dental College & Hospital, Chitradurga (8) H.K.E. Society's Dental College, Gulbarga	Rajiv Gandhi University of Health Sciences, Bangalore

Bachelor of Dental Surgery	BDS
(9) V.S. Dental College, Bangalore	
(10) M.R.A. Dental College, Bangalore	
(11) P.M. Nadaguda Dental College and Hospital, Bagalkot	
(12) College of Dental Sciences, Davangere	
(13) KVG Dental College and Hospital, Sullia	
(14) Yenepoya Dental College, Mangalore	
(15) Bangalore Instt. of Dental Sciences and Hospital, Bangalore	
(16) Dayanand Sagar College of Dental Sciences, Bangalore	
(17) Sri Hasanamba Dental College and Hospital, Hassan	
(18) M.S. Ramaiaha Dental College, Bangalore	
(19) KGF College of Dental Sciences, Kolar Gold Fields	
(20) S.B. Patil Institute for Dental Sciences and Research, Bidar	
(21) Al. Ameen Dental College, Bijapur	
(22) Dr. Syamala Reddy Dental College, Bangalore	
(23) H.K.D.E.T's Dental College and Hospital Humnabad	
(24) Al-badar Rural Dental College and Hospital, Gulbarga	
(25) AME's Dental College, Raichur.	

[No. V. 12018/1/2002-PMS]

S. K. RAO, Director (ME)

नई दिल्ली, 22 जनवरी, 2003

का.आ. 364.—केन्द्रीय सरकार, भारतीय दंत चिकित्सा परिषद् से परामर्श करने के पश्चात्, दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उप-धारा (2) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए एतद्द्वारा उक्त अधिनियम की अनुसूची के भाग I में निम्नलिखित संशोधन करती है, नामत :

अनुसूची के भाग I में क्रम संख्या 57 तथा उससे संबंधित प्रविष्टियों के पश्चात् निम्नलिखित प्रविष्टियां जोड़ी जाएंगी, नामत:

	बैचलर आफ डेन्टल सर्जरी	बी.डी.एस.
58. महाराष्ट्र यूनिवर्सिटी आफ हेल्थ साइसेंज नासिक।	निम्नलिखित दंत चिकित्सा कालेजों के बी.डी.एस. छात्रों के संबंध में दंत चिकित्सा अर्हताएं तभी मान्यताप्राप्त अर्हताएं होंगी यदि ये 14-7-2002 को अथवा इसके बाद प्रदान की गई हों : (1) नायर हास्पिटल डेंटल कालेज, मुंबई (2) गवर्नमेंट डेंटल कालेज एंड हास्पिटल, मुंबई (3) गवर्नमेंट डेंटल कालेज एंड हास्पिटल, नागपुर (4) गवर्नमेंट डेंटल कालेज एंड हास्पिटल, औरंगाबाद (5) रूरल डेंटल कालेज, लोनी (6) विदर्भ यूथ वेल्फेयर सोसाइटीज डेंटल एंड हास्पिटल, अमरावती (7) महात्मा गांधी विद्यामंदिर डेंटल कालेज एंड हास्पिटल, नासिक (8) पदमश्री डा. डी. वाई. पाटिल डेंटल कालेज एंड हास्पिटल, नवी मुंबई (9) वसंतदादा डेंटल कालेज एंड हास्पिटल, सांगली (10) जमनालाल गोयनका डेंटल कालेज एंड हास्पिटल, अकोला (11) श्रीमती राधिकाबाई मेघे मेमोरियल मेडिकल ट्रस्ट शरद पवार डेंटल कालेज एंड हास्पिटल, वर्धा (12) छत्रपति साहू महाराज शिक्षण संस्थान डेंटल कालेज एंड हास्पिटल, औरंगाबाद	महाराष्ट्र यूनिवर्सिटी आफ हेल्थ साइसेंज, नासिक।

[सं. वी. 12018/1/2002-पी एम एस]

एस. के. राव, निदेशक (एम.ई.)

New Delhi, the 22nd January, 2003

S.O. 364.—In exercise of the powers conferred by Sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

In Part I of the Schedule after Serial Number 57, and the entries relating thereto, the following entries shall be added, namely :—

	Bachelor of Dental Surgery	BDS
58. Maharashtra University of Health Sciences, Nashik.	The dental qualification shall be recognized qualifications in respect of BDS students of the following dentals college if granted on or after 14-7-2002 : (1) Nair Hospital Dental College, Mumbai (2) Govt. Dental College & Hospital, Mumbai (3) Govt. Dental College & Hospital, Nagpur. (4) Govt. Dental College & Hospital, Aurangabad. (5) Rural Dental College, Loni (6) Vidrabha Youth Welfare Society's Dental College & Hospital, Amravati. (7) Mahatma Gandhi Vidyamandir's Dental College & Hospital, Nashik. (8) Padamshree Dr. D.Y. Patil Dental College & Hospital, Navi Mumbai. (9) Vasantdada Dental College & Hospital, Sangli. (10) Jamanlal Goenka Dental College & Hopital, Akola. (11) Smt. Radhikabai Meghe Memorial Medical Trust's Sharad Pawar Dental College & Hospital, Wardha. (12) Chhatrapati Sahu Maharaj Shikshan Sanstha's Dental College & Hospital, Aurangabad.	Maharashtra University of Health Sciences, Nashik.

[No. V. 12018/1/2002-PMS]

S. K. RAO, Director (ME)

नागर विमानन मंत्रालय

नई दिल्ली, 20 जनवरी, 2003

का. आ. 365.—वायुयान नियमावली 1937 के नियम 3क के उपनियम (1) के अनुसरण में, भारत सरकार के तत्कालीन नागर विमानन और पर्यटन मंत्रालय की अधिसूचना सं. का.आ. 727(अ), तारीख 4 अक्टूबर, 1994 में, उन बातों के सिवाय, जिन्हें ऐसे संशोधनों से पूर्व किया गया है या करने से लोप किया गया है, निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना की पहली अनुसूची में,—

(क) स्तंभ 1 में आने वाली-प्रविष्टि "उपमहानिदेशक, नागर विमानन (उपमहानिदेशक, नागर विमानन, अनुसंधान एवं विकास के सिवाय)" और स्तंभ 2 में उससे संबंधित प्रविष्टियों के पश्चात् निम्नलिखित अंत:स्थापित किया जाएगा, अर्थात् :—

1	2
"मुख्य उड़ान प्रचालन निरीक्षक	91"

(ख) स्तंभ 1 में आने वाली प्रविष्टि "निदेशक, प्रशिक्षण और अनुज्ञापन" के सामने स्तंभ 2 में आने वाले अंक "91" का लोप किया जाएगा।

[फा. सं. एवी. 11016/2/2002-ए]

एम.एस. चोपड़ा, अवर सचिव

नोट :—मूल अधिसूचना दिनांक 4 अक्टूबर, 1994 की अधिसूचना सं. एस.ओ. 727(अ) द्वारा, सरकारी राजपत्र में प्रकाशित की गई थी और दिनांक 29 मई, 2002 की अधिसूचना सं. एस.ओ. 1873 द्वारा अंतिम संशोधन किया गया था।

MINISTRY OF CIVIL AVIATION

New Delhi, the 20th January, 2003

S.O. 365.—In pursuance of Sub-rule (1) of rule 3A of the Aircraft Rules, 1937, the Central Government hereby makes the following further amendments in the notification of the Government of India, in the then Ministry of Civil Aviation and Tourism Number S.O. 727 (E), dated the 4th October, 1994 except as respects things done or omitted to be done before such amendments, namely :—

In the said notification, in the First Schedule,—

(a) after the entry "Deputy Director General of Civil Aviation (except Deputy Director General of Civil Aviation, Research and Development)" occurring in column 1 and the entries relating thereto in column 2, the following shall be inserted, namely :—

1	2
"Chief Flight Operations Inspector	91";

(b) against entry "Director of Training and Licensing", occurring in column 1 the figure "91" occurring in column 2 shall be omitted.

[F. No. AV. 11016/2/2002-A]

M.S. CHOPRA, Under Secy.

Note : The principal notification was published in the Official Gazette vide notification number S.O. 727(E), dated the 4th October, 1994 and was lastly amended vide notification number S.O. 1873, dated the 29th May, 2002.

नई दिल्ली, 20 जनवरी, 2003

का. आ. 365.—केन्द्रीय सरकार, वायुयान नियम, 1937 के नियम 3क के उपनियम (2) के अनुसरण में, भारत सरकार के तत्कालीन नागर विमानन और पर्यटन मंत्रालय की अधिसूचना सं. का.आ. 726(अ), तारीख 4 अक्तूबर, 1994 में, उन बातों के सिवाय, जिन्हें ऐसे संशोधनों से पूर्व किया गया है या करने से लोप किया गया है, निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में,—

(क) प्रथम अनुसूची में,—

(i) स्तंभ 1 में आने वाली प्रविष्टि उपमहानिदेशक, नागर विमानन (उपमहानिदेशक, नागर विमानन, अनुसंधान एवं विकास के सिवाय) और निदेशक, उड़नयोग्यता (मुख्यालय) के सामने स्तंभ 2 में, "1 से 5" अंकों और शब्दों के स्थान पर "1, 2 से 5" अंक और शब्द रखे जाएंगे;

(ii) स्तंभ 1 में आने वाली प्रविष्टि "उपमहानिदेशक नागर विमानन (उपमहानिदेशक, नागर विमानन, अनुसंधान एवं विकास के सिवाय)" और स्तंभ 2 में उससे संबंधित प्रविष्टियों के पश्चात् निम्नलिखित अन्त:स्थापित किया जाएगा, अर्थात् :—

1	2
"मुख्य उड़ान प्रचालन निरीक्षक	1, 1 क, 7 से 9, 63, 74, 75"

(ख) दूसरी अनुसूची में, क्र. सं. 1 के पश्चात् निम्नलिखित क्रम संख्या और प्रविष्टियाँ और स्तंभ 2 और स्तंभ 3 में उनकी तत्स्थानी प्रविष्टियाँ अंत:स्थापित की जाएंगी, अर्थात् :—

"1क	नियम 6ग	किसी अनुज्ञप्ति धारक को ऐसा विमान उड़ाने के लिए प्राधिकृत करना, जिसको परीक्षण के प्रयोजन के लिए अराजस्व यात्री रहित उड़ानों के किसी विनिर्दिष्ट विशेष प्रयोजन के लिए अनुज्ञप्ति की वायुयान रेटिंग में प्रविष्टि नहीं किया गया है।

[फा. सं. एवी. 11016/2/2002-ए]

एम.एस. चोपड़ा, अवर सचिव

नोट :—मूल अधिसूचना दिनांक 4 अक्तूबर, 1994 की अधिसूचना सं. का.आ. 726(अ) द्वारा सरकारी राजपत्र में प्रकाशित की गई थी और दिनांक

25 मई, 1998 की अधिसूचना सं. का.आ. 1095 द्वारा अंतिम संशोधन किया गया था।

New Delhi, the 20th January, 2003

S.O. 366.—In pursuance of sub-rule (2) of rule 3A of the Aircraft Rules, 1937, the Central Government hereby makes the following further amendments in the notification of the Government of India, in the then Ministry of Civil Aviation and Tourism Number S.O. 726 (E), dated the 4th October, 1994 except as respects things done or omitted to be done before such amendments, namely :—

In the said notification,—

(a) in the First Schedule,—

(i) against entry "Deputy Director General of Civil Aviation (except Deputy Director General of Civil Aviation Research & Development) and Director of Airworthiness (Headquarters)" occurring in column 1, in column 2, for the figures and word "1 to 5", the figures and word "1, 2 to 5" shall be substituted.

(ii) after the entry "Deputy Director General of Civil Aviation (except Deputy Director General of Civil Aviation, Research & Development)" occurring in column 1, and the entries relating thereto in column 2, the following shall be inserted, namely :—

1	2
"Chief Flight Operations Inspector	1, 1A, 7 to 9, 63, 74, 75";

(b) in the Second Schedule, after serial number 1, the following serial number and entries and the corresponding entries thereto in column 2 and 3, shall be inserted, namely :—

1	2	3
"1A.	rule 6C	To authorise the holder of a licence fly an aircraft not entered in the aircraft rating of the licence, for the purpose of testing or for specific special purpose non-revenue, non-passenger carrying flights".

[F. No. AV. 11016/2/2002-A]

M.S. CHOPRA, Under Secy.

Note : The principal notification was published in the Official Gazette vide notification number S.O. 726(E), dated the 4th October, 1994 and was lastly amended vide notification number S.O. 1095, dated the 25th May, 1998.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 31 दिसम्बर, 2002

का. आ. 367.—इस मंत्रालय की दिनांक 5-11-2001 की समसंख्यक अधिसूचना के अनुक्रम में चलचित्रकी (प्रमाणन) नियम, 1983 के नियम-7 और 8 के साथ पठित चलचित्रकी अधिनियम, 1952 (1952 का 37) की धारा 5 की उपधारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार श्री रामप्रताप बहुगुणा द्वारा श्री सुधीर जोशी, 149, सेक्टर-1, आर.के. पुरम, नई दिल्ली-22 को दो वर्ष की अवधि के लिए अथवा अगले आदेशों तक जो भी पहले हो, तत्काल प्रभाव से केन्द्रीय फिल्म प्रमाणन बोर्ड के दिल्ली सलाहकार पैनल के सदस्य के रूप में नियुक्त करती है।

[फा. सं० 809/2/2002-एफ (सी)]

एस. भट्टाचार्य, अनुभाग अधिकारी

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 31st January, 2002

S.O. 367.—In continuation of this Ministry's Notification of even No. dated 5-11-2001 and in exercise of the powers conferred by sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint Shri Rampratap

Bahuguna C/o Shri Sudhir Joshi, 149, Sector-I, R.K. Puram, New Delhi-110022 as Member of the Delhi Advisory Panel of the Central Board of Film Certification (CBFC) with immediate effect for a period of two years or until further orders, whichever is earlier :

[F. No. 809/2/2002-F (C)]
S. BHATTACHARYA, Section Officer

शहरी विकास और गरीबी उपशमन मंत्रालय

नई दिल्ली, 23 जनवरी, 2003

का. आ. 368.— केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10(4) के अनुसरण में संपदा निदेशालय के निम्नलिखित कार्यालय को, जिनके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है : —

संपदा प्रबंधक कार्यालय, कोलकाता

[सं० ई-11014/4/2000-हिन्दी]

एम. राजामणि, संयुक्त सचिव

MINISTRY OF URBAN DEVELOPMENT AND POVERTY ALLEVIATION

New Delhi, the 23rd January, 2003

S.O. 368.—In pursuance of sub-rule (4) of rule 10 of the Official Language (Use for the Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office of Dte. of Estates, where more than 80% of staff have acquired working knowledge in Hindi :—

Office of Estate Manager, Kolkata

[No. E-11014/4/2000-Hindi]

M. RAJAMANI, Jt. Secy.

विद्युत मंत्रालय

नई दिल्ली, 7 जनवरी, 2003

का० आ० 369.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10(4) के अनुसरण में पावरग्रिड कारपोरेशन ऑफ इंडिया लि०, फरीदाबाद के नियंत्रणाधीन पावरग्रिड कारपोरेशन ऑफ इंडिया लि०, उ०क्षे०-1, इलाहाबाद कार्यालय, जिसके 80 प्रतिशत कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है।

[सं० 11017/2/94-हिन्दी]

अजय शंकर, संयुक्त सचिव

MINISTRY OF POWER

New Delhi, the 7th January, 2003

S.O. 369.—In pursuance of Sub-rule (4) of rule 10 of the Official language (use for official purposes of the Union) Rules, 1976 the Central Government hereby notifies the Powergrid Corporation of India Ltd., NR-I, Allahabad office under the control of Powergrid Corporation of India Ltd., Faridabad, the staff whereof have acquired 80% working knowledge of Hindi.

[No. 11017/2/94-Hindi]

AJAY SHANKAR, Jt. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 23 जनवरी, 2003

का. आ. 370.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 1377 तारीख 10 अप्रैल 2002 द्वारा पश्चिमी बंगाल राज्य में हल्दिया से बिहार राज्य में बरौनी तक इंडियन ऑयल कार्पोरेशन लिमिटेड द्वारा कच्चे तेल के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन हेतु उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियाँ जनता को तारीख 17 मई 2002 को उपलब्ध करा दी गई थी ;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है ;

और केन्द्रीय सरकार का, उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त भूमि पेट्रोलियम उत्पादों के परिवहन के लिए पाइपलाइन बिछाई जाने हेतु, अपेक्षित हैं,

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, घोषणा करती है कि इस अधिसूचना की अनुसूची में विर्निदिष्ट भूमि में उपयोग का अधिकार पाइपलाइन बिछाए जाने के लिए अर्जित किया जाता है ;

और केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख को केन्द्रीय सरकार में निहित होने के बजाय सभी विल्लगमों से मुक्त, इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

अनुसूची

पुलिस थाना : महिशादल जिला : मिदनापूर राज्य : पश्चिमी बंगाल

गाँव	अधिकारिता सूची संख्या	प्लॉट संख्या	क्षेत्र		
			हेक्टेयर	आरे	सेंटीआरे
1	2	3	4	5	6
वामुनया	134	1511	00	02	07
		1512	00	00	20
केशवपुर जलपाइ	133	723	00	01	12
		788	00	00	41
		796	00	00	20
कञ्जपुर जलपाइ	132	174/1283	00	08	17
		178/1320	00	02	59
		181/1335	00	04	00
		181/1336	00	00	20
		181/1337	00	03	43
		182/1338	00	06	03
		824/1407	00	00	34
राजारामपुर	130	2868/2903	00	00	20
		2869/2945	00	02	78
दक्षिण कशिम नगर	129	429	00	00	20
पुलिस थाना : नन्दकुमार					
कल्यानपुर	125	387	00	00	86
		657	00	07	80
माधवपूर	122	256	00	01	50
भवानीपूर	73	1057	00	00	44
शाममुन्दरपूर	74	2	00	03	01
		9	00	07	98

1	2	3	4	5	6
		11	00	02	59
		12	00	00	20
		13	00	13	92
		18	00	01	39
		19	00	07	70
		20	00	00	20
		21	00	00	32
		22	00	00	55
		25	00	00	20
		43	00	02	78
		44	00	00	20
		50	00	04	73
		53	00	05	20
		54	00	05	24
		55	00	03	01
		56	00	07	33
		58	00	00	20
		59	00	01	11
		60	00	04	04
		154	00	04	70
		184	00	01	80
		185	00	05	29
		186	00	05	38
		187	00	03	71
		197	00	14	75
		198	00	09	46
		199	00	01	01
		203	00	04	36
		204	00	01	67
		205	00	00	20
ठाकूरचक	75	567	00	03	26
		754	00	00	97
		773	00	00	20

1	2	3	4	5	6
		774	00	05	24
		775	00	05	28
		776	00	09	00
		779	00	15	78
		781	00	00	20
		782	00	00	20
		784	00	02	97
		753/849	00	01	44
दक्षिण दामोदरपूर	28	100	00	02	45
		102	00	01	71
		115	00	03	74
		721	00	01	54
		1479	00	00	73
चक सिमूलिया	14	511	00	00	62
नछिपूर	27	11	00	00	58
महिसगोट	21	217	00	01	10
		223	00	01	14
		262	00	01	01
मल्लिक चक	20	179	00	00	95
		181	00	00	98
		188	00	01	10
बड़चबेरिया	17	62	00	04	65
		69	00	04	49
पुलिस थाना : पाँशकुडा					
परशोत्तमपूर	331	1212/1655	00	01	42
फकिरगंज	332	270	00	00	96

1	2	3	4	5	6
		271	00	00	60
देहाटि	72	719	00	02	05
पुर्बपितपूर	69	1364	00	00	20
		1393	00	00	20
		1831	00	00	20
		1365/1982	00	02	44
		1365/2243	00	02	18
		1420/1988	00	02	28
केशापाट	50	475	00	02	47
हातिशाल	51	2698	00	00	69
पुलिस थाना : तमलूक					
कलिकापूर	256	230	00	04	50
चक्दुर्गादास	115	630	00	01	73
		805	00	00	80
पुलिस थाना : घाटाल					
शीलाराजनगर	144	872	00	04	37
भेरीवलरामकुन्डु	67	476	00	00	87
		476/795	00	06	98
पुलिस थाना : दासपूर					
पंच बरा	165	939	00	02	34
		951	00	02	44
		952	00	00	20
जटगोबरद्यनपूर	167	597	00	18	11

1	2	3	4	5	6
चक सूलतानपूर	163	12	00	00	20
		1220	00	03	16
		1221	00	00	40
		2258	00	00	50
लक्ष्मण चक	82	993	00	01	20
जटाधरपूर	74	454	00	01	40
		697	00	02	71
वारजालालपूर	75	462	00	13	50
खर राधाकृष्नपूर	68	745	00	00	87
सूजानगर	53	458/1132	00	02	02
वासूदेवपूर	63	1801	00	07	47
		1803	00	00	69
		1805	00	00	89
		1819	00	03	48
		2424	00	03	10
		994/2375	00	00	92
		1777/2412	00	02	14
		1778/2413	00	01	62
		1801/2414	00	03	62
बइकुन्ठपूर	64	111	00	01	53
		293	00	01	14
		792	00	00	20
		803	00	00	40
		806	00	03	41
		830	00	01	46
		832	00	05	47
		833	00	02	88

1	2	3	4	5	6
		859	00	02	69
		868	00	00	20
		869	00	04	50
		870	00	04	26
		880	00	21	00
		881	00	00	20
		905	00	00	20
		951	00	00	77
		952	00	00	40
		953	00	02	72
		963	00	00	20
		884/944	00	00	86

[फा. सं. आर-25011/8/2002-ओ.आर-I]

रेनुका कुमार, अवर सचिव

Ministry of Petroleum and Natural Gas

New Delhi, the 23rd January, 2003

S. O. 370.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 1377 dated the 10th April, 2002, issued under sub section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act.), the Central Government declared its intention to acquire the right of user in the land, specified in the Schedule appended to that notification for the purpose of laying pipeline for the transportation of crude oil from Haldia in the State of West Bengal to Barauni in the State of Bihar;

And whereas, the copies of the said gazette notification were made available to the public on the 17th May, 2002;

And whereas, the competent authority in pursuance of sub-section (1) of section 6 of the said Act, has submited his report to the Central Government;

And whereas, the Central Government, after considering the said report, is satisfied that the said land are required for laying of the pipelines for the transport of the petroleum products ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the lands specified in the Schedule to this notification are hereby acquired for laying the pipelines;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land shall instead of vesting in the Central Government, vest on the date of publication of this declaration in the Indian Oil Corporation Limited free from all encumbrances;

SCHEDULE

Police Station : Mahishadal District : Midnapur State : West Bengal

Village	Jurisdiction List No.	Plot. No.	Area		
			Hectares	Ares	Centiares
1	2	3	4	5	6
Bamunya	134	1511	00	02	07
		1512	00	00	20
Keshabpur Jalpai	133	723	00	01	12
		788	00	00	41
		796	00	00	20
Kanchanpur Jalpai	132	174/1283	00	08	17
		178/1320	00	02	59
		181/1335	00	04	00
		181/1336	00	00	20
		181/1337	00	03	43
		182/1338	00	06	03
		824/1407	00	00	34
Rajarampur	130	2868/2903	00	00	20
		2869/2945	00	02	78
Dakshin Kashimnagar	129	429	00	00	20
Police Station : Nandakumar					
Kalyanpur	125	387	00	00	86
		657	00	07	80
Madhabpur	122	256	00	01	50
Bhabanipur	73	1057	00	00	44
Shyam Sundarpur	74	2	00	03	01
		9	00	07	98

1	2	3	4	5	6
		11	00	02	59
		12	00	00	20
		13	00	13	92
		18	00	01	39
		19	00	07	70
		20	00	00	20
		21	00	00	32
		22	00	00	55
		25	00	00	20
		43	00	02	78
		44	00	00	20
		50	00	04	73
		53	00	05	20
		54	00	05	24
		55	00	03	01
		56	00	07	33
		58	00	00	20
		59	00	01	11
		60	00	04	04
		154	00	04	70
		184	00	01	80
		185	00	05	29
		186	00	05	38
		187	00	03	71
		197	00	14	75
		198	00	09	46
		199	00	01	01
		203	00	04	36
		204	00	01	67
		205	00	00	20
Thakurchak	75	567	00	03	26
		754	00	00	97
		773	00	00	20

1	2	3	4	5	6
		774	00	05	24
		775	00	05	28
		776	00	09	00
		779	00	15	78
		781	00	00	20
		782	00	00	20
		784	00	02	97
		753/849	00	01	44
Dakshin Damodarpur	28	100	00	02	45
		102	00	01	71
		115	00	03	74
		721	00	01	54
		1479	00	00	73
Chak Simulya	14	511	00	00	62
Nachhipur	27	11	00	00	58
Mahisgot	21	217	00	01	10
		223	00	01	14
		262	00	01	01
Mallik Chak	20	179	00	00	95
		181	00	00	98
		188	00	01	10
Baich Berya	17	62	00	04	65
		69	00	04	49
Police Station : Panskura					
Purusattompur	331	1212/1655	00	01	42
Fakirganj	332	270	00	00	96

1	2	3	4	5	6
		271	00	00	60
Dehati	72	719	00	02	05
Purbapitpur	69	1364	00	00	20
		1393	00	00	20
		1831	00	00	20
		1365/1982	00	02	44
		1365/2243	00	02	18
		1420/1988	00	02	28
Keshapat	50	475	00	02	47
Hatishal	51	2698	00	00	69
Police Station : Tamluk					
Kalikapur	256	230	00	04	50
Chak Durgadas	115	630	00	01	73
		805	00	00	80
Police Station : Ghatal					
Silarajnagar	144	872	00	04	37
Bheri Balaramkundu	67	476	00	00	87
		476/795	00	06	98
Police Station : Daspur					
Panch Berya	165	939	00	02	34
		951	00	02	44
		952	00	00	20
Jot Gobardhanpur	167	597	00	18	11

1	2	3	4	5	6
Chak Sultanpur	163	12	00	00	20
		1220	00	03	16
		1221	00	00	40
		2258	00	00	50
Lakshmanchak	82	993	00	01	20
Jatadharpur	74	454	00	01	40
		697	00	02	71
Barjalalpur	75	462	00	13	50
Khar Radhakrishnapur	68	745	00	00	87
Sujanagar	53	458/1132	00	02	02
Basudevpur	63	1801	00	07	47
		1803	00	00	69
		1805	00	00	89
		1819	00	03	48
		2424	00	03	10
		994/2375	00	00	92
		1777/2412	00	02	14
		1778/2413	00	01	62
		1801/2414	00	03	62
Baikunthapur	64	111	00	01	53
		293	00	01	14
		792	00	00	20
		803	00	00	40
		806	00	03	41
		830	00	01	46
		832	00	05	47
		833	00	02	88

1	2	3	4	5	6
		859	00	02	69
		868	00	00	20
		869	00	04	50
		870	00	04	26
		880	00	21	00
		881	00	00	20
		905	00	00	20
		951	00	00	77
		952	00	00	40
		953	00	02	72
		963	00	00	20
		884/944	00	00	86

[No. R-25011/8/2002-O.R.-I]
RENUKA KUMAR, Under Secy.

नई दिल्ली, 29 जनवरी, 2003

का. आ. 371.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि उत्तर प्रदेश राज्य में सहारनपुर से नजीबाबाद तक पेट्रोलियम उत्पादों के परिवहन के लिए इंडियन ऑयल कार्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि इस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि में उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति,जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको, भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर उसमें उपयोग के अधिकार के अर्जन या भूमि के नीचे पाइपलाइन बिछाने के संबंध में श्री लोकेन्द्र पाल सिंह, सक्षम प्राधिकारी, इंडियन ऑयल कार्पोरेशन लिमिटेड, सहारनपुर–नजीबाबाद पाइपलाइन परियोजना, के–33, पल्लवपुरम, फेस–2, मेरठ (उत्तर प्रदेश) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

तहसील : नजीबाबाद जिला : बिजनौर राज्य : उत्तर प्रदेश

गांव	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	आर	सेंटीआर
1	2	3	4	5
नंगला सेम्बल	88	0	16	44
राहुखेडी कौरा	32	0	13	99
	36	0	09	23
	37	0	04	00
	104	0	00	40

[फा. सं. आर-25011/1/2003-ओ.आर-I]

रेनुका कुमार, अवर सचिव

New Delhi, the 29th January, 2003

S. O. 371.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of petroluem products from Saharanpur to Nazibabad in the state of Uttar Pradesh, a Pipeline should be laid by the Indian Oil Corporation Limited;

And whereas, it appears that for the purpose of laying such pipeline it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962(50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person, interested in the land described in the said Schedule may within twenty one days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri Lokendra Pal Singh, Competent Authority, Indian Oil Corporation Limited, Saharanpur - Nazibabad Pipeline Project, K-33, Pallavpuram, Phase-II, Meerut (U.P.)

SCHEDULE

Tehsil : Najibabad District : Bijnor State : Uttar Pradesh

Village	Khasra No.	Area		
		Hectare	Are	Centiare
1	2	3	4	5
Nagla Sembal	88	0	16	44
Rahukheri Kaura	32	0	13	99
	36	0	09	23
	37	0	04	00
	104	0	00	40

[No. R-25011/1/2003-O.R.-I]
RENUKA KUMAR, Under Secy.

नई दिल्ली, 29 जनवरी, 2003

का. आ. 372.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि उत्तर प्रदेश राज्य में सहारनपुर से नजीबाबाद तक पेट्रोलियम उत्पादों के परिवहन के लिए इंडियन ऑयल कार्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए,

और ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतील होता है कि इस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि में उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि से हितबद्ध है, उस तारीख से जिसको, भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर उसमें उपयोग के अधिकार के अर्जन या भूमि के नीचे पाइपलाइन बिछाने के संबंध में श्री लोकेन्द्र पाल सिंह, सक्षम प्राधिकारी, इंडियन ऑयल कार्पोरेशन लिमिटेड, सहारनपुर–नजीबाबाद पाइपलाइन परियोजना, के–33, पल्लवपुरम, फेस–2, मेरठ (उत्तर प्रदेश) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

तहसील : सहारनपुर जिला : सहारनपुर राज्य : उत्तर प्रदेश

गांव	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	आर	सेंटीआर
1	2	3	4	5
गागलहेडी एहतमाल	286	0	10	39
नांगल	55	0	15	92
चोरादेव	96	0	00	72
	842	0	00	67
	843	0	00	25
	849	0	37	20
	851	0	16	09

[फा. सं. आर-25011/4/2003-ओ.आर-I]

रेनुका कुमार, अवर सचिव

New Delhi, the 29th January, 2003

S. O. 372.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of petroluem products from Saharanpur to Nazibabad in the state of Uttar Pradesh, a Pipeline should be laid by the Indian Oil Corporation Limited;

And whereas, it appears that for the purpose of laying such pipeline it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962(50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person, interested in the land described in the said Schedule may within twenty one days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri Lokendra Pal Singh, Competent Authority, Indian Oil Corporation Limited, Saharanpur - Nazibabad Pipeline Project, K-33, Pallavpuram, Phase-II, Meerut (U.P.)

SCHEDULE

Tehsil : Saharanpur District : Saharanpur State : Uttar Pradesh

Village	Khasra No.	Area		
		Hectare	Are	Centiare
1	2	3	4	5
Gagalheri Ahtmal	286	0	10	39
Nangal	55	0	15	92
Chauradev	96	0	00	72
	842	0	00	67
	843	0	00	25
	849	0	37	20
	851	0	16	09

नई दिल्ली, 30 जनवरी, 2003

का. आ. 375.--केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है।) कि धारा 3 की उप-धारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का. आ. 1706 तारीख 16 जुलाई 2001 द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिदृष्ट भुमि में इंडियन ऑयल कॉरपोरेशन लिमिटेट द्वारा सलाया-मथुरा पाइपलाइन प्रयोजना के विरमगाम-चाकसू, चाकसू-पानीपत और चाकसू-मथुरा सेक्शनों के संवर्द्धन के क्रियान्वयन के लिए गुजरात राज्य में विरमगाम से हरियाणा राज्य में पानीपत तक राजस्थान राज्य में चाकसू से होकर अपरिष्कृत तेल के परिवहन के लिए पाइप लाइन बिछाने के प्रयोजन के लिए उपयोग का अधिकार का अर्जन करने के लिए अपने आशय की घोषणा की थी।

पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 कि धारा 3 की उप-धारा (1) के अधीन गाँव तेनीवाड़ा में कुछ सर्वे संख्याक के संबंध में जारी की गयी अधिसुचना के संशोधन कारी अधिसूचना का आ. संख्या 2683 तारीख 16अगस्त 2002 के अधिन प्रकाशित की गयी थी।

और उक्त संशोधनकारी अधिसूचना की प्रतियाँ जनता को तारीख 31 अगस्त 2002 को उपलब्ध करा दी गई थी;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उप-धारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाना चाहिए;

अतः, अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाईन बिछाने का अधिकार अर्जन किया जाता है;

और केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाए सभी विल्लंगमों से मुक्त, इंडियन ऑयल कॉपोरेशन लिमिटेड में निहित होगा।

अनुसूची

तालूका : वडगाम	जिला : बनासकांटा		राज्य : गुजरात		
			क्षेत्रफल		
गाँव का नाम	सर्वे सं.	उप-खण्ड सं.	हेक्टर	एयर	वर्गमीटर
1	2	3	4	5	6
तेनीवाडा	124	2	0	05	68
	129		0	20	90

फुटनोटः (i) अधिसूचना सं. का.आ. 1706 तारीख 16 जुलाई 2001 भाग 2 खण्ड 3 उपखण्ड (ii) के आधीन भारत के राजपत्र तारीख 21 जुलाई 2001 में प्रकाशित हुआ।

(ii) अधिसुचंना सं. क. अ. 2683 तारीख 16 अगस्त 2002 भाग 2 खण्ड 3 उप खण्ड (ii) के अधीन भारत के राजपत्र तारीख 24 अगस्त 02 में प्रकाशित हुआं

[फा. सं. आर-25011/21/2001-ओ.आर-I]
रेनुका कुमार, अवर सचिव

New Delhi, the 30th January, 2003

S. O. 373.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 1706 dated the 16.07.2001 issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), (herein after referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land specified in the schedule appended to that notification, for the purpose of laying pipeline for the transportation of Crude Oil from Viramgam in the State of Gujarat to Panipat in the State of Haryana via Chaksu in the State of Rajasthan by the Indian Oil Corporation Limited for implementing the Augmentation of Viramgam - Chaksu, Chaksu - Panipat & Chaksu - Mathura sections of Salaya - Mathura Pipeline System Project.

An amendment notification to notification u/s 3(1) in respect of certain Survey Numbers in Village : Teniwada, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 was published under S.O.No. 2683 dated 16.08.2002.

And whereas, copy of the said amendment notification to notification was made available to the general public on 31.08.2002;

And whereas, the Competent Authority has under sub-section (1) of section 6 of the said Act submitted his report to the Central Government;

And whereas, the Central Government, after considering the said report is satisfied that the right of user in the land specified in the Schedule appended to this Notification should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired;

And further, in exercise of the powers conferred by sub-section (4) of section 6 the said Act, the Central Government hereby directs that the right of user in the said land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

—

SCHEDULE

Taluka : Vadgam	District : Banaskanatha		State : Gujarat		
Name of the Village			Area		
	Survey No.	Sub-Division No.	Hectare	Area	Sq. mtr.
1	2	3	4	5	6
TENIWADA	124	2	0	05	68
	129	-	0	20	90

Footnote :- (i) Notification S.O. No. 1706 dated 16th July, 2001 was published in the Gazette of India dated 21st July, 2001 in part - II section 3 sub section (ii)

(ii) Notification S.O. No. 2683 dated 16th August, 2002 was published in the Gazette of India dated 24th August, 2002 in part - II section 3 sub section (ii)

[No. R-25011/21/2001-O.R.-I]
RENUKA KUMAR, Under Secy.

नई दिल्ली, 30 जनवरी, 2003

का. आ. 374.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 1496 तारीख 1 मई 2002 और का. आ. 3154 तारीख 3 अक्तूबर, 2002 द्वारा, इन अधिसूचनाओं से संलग्न विनिर्दिष्ट भूमि में क्रमशः भारत के राजपत्र भाग—2, खंड 3, उपखंड (ii) तारीख 4 मई 2002 तथा 5 अक्तूबर 2002 में प्रकाशित की गई थी, गुरू गोविन्द सिंह रिफाइनरीज लिमिटेड (हिन्दुस्तान पेट्रोलियम कॉरपोरेशन लिमिटेड की समनुषंगी) द्वारा मुन्द्रा—भटिंडा अपरिष्कृत तेल पाइपलाइन परियोजना के माध्यम से गुजरात राज्य में मुन्द्रा पत्तन स्थित अपरिष्कृत तेल संस्थान (सी.ओ.टी.) से पंजाब राज्य में भटिण्डा तक पेट्रोलियम उत्पादों के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन के लिये उपयोग के अधिकार के अर्जन करने के अपने आशय की घोषणा की थी ;

और उक्त राजपत्र अधिसूचनाओं की प्रतियां जनता को तारीख 23 अक्तूबर 2002 को उपलब्ध करा दी गई थीं;

और, उक्त पाइपलाइन बिछाने के सम्बन्ध में जनता से कोई आक्षेप प्राप्त नहीं हुए हैं ;

और, सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात और उसका यह समाधान हो जाने पर कि पाइपलाइन बिछाई जाने के लिए उक्त भूमि अपेक्षित है उसमें उपयोग का अधिकार का अर्जित करने का विनिश्चय किया है ;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है ;

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि पाइपलाइन बिछाने के लिए भूमि में उपयोग का अधिकार, इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाए सभी विल्लंगमों से मुक्त, गुरू गोबिन्द सिंह रिफाइनरीज लिमिटेड (हिन्दुस्तान पेट्रोलियम कॉरपोरेशन लिमिटेड की समनुषंगी) में निहित होगा।

अनूसूची

तहसील ऐलनाबाद जिला सिरसा राज्य हरियाणा

क्रं सं.	गांव का नाम	हदबस्त नम्बर	खसरा नम्बर	हिस्सा (यदि कोई है)	क्षेत्रफल कनाल - मरला
1	2	3	4	5	6
1	मिठीसुरेरा	110	21/4	-	0 - 13
			21/22	2/2/1	0 - 1
			21/22	2/2/2	0 - 5
			65/25	2	0 - 1
			274	3	0 - 1

1	2	3	4	5	6
2	खारीसुरेरा	111	15/5	-	2 - 14
			15/6	-	0 - 14
			55/16	2	2 - 5
			58/20	1	0 - 4
			58/21	4	1 - 14
			77/1	1	2 - 5
3	मिठनपूर	112	83/19	2	0 - 1
4	ममेरा	131	88/20	1	2 - 9
			88/20	2	0 - 3
			120/3	1	2 - 6
			120/19	2	0 - 9
			208	2	0 - 9
			282	2	0 - 3
			768	-	0 - 5
			799	-	0 - 3
5	मौजूखेड़	133	33/24	2/1/1	0 - 1
			33/24	2/1/2	0 - 1
			33/24	2/2/1	0 - 2
			33/24	2/2/2	2 - 4
			46/16	1/1	0 - 4
			46/16	1/2	0 - 9
			46/16	2/1	0 - 1
			46/16	2/2	1 - 17
			47/2	1	0 - 6
			55/5	1	0 - 1
			71/15	-	1 - 12
			73/25	2	1 - 7
			73/27	-	0 - 11
			74/9	2	0 - 18
			88/5	1/1	0 - 2
			88/5	1/2	2 - 13
			88/6	1/1/1	0 - 5
			88/6	1/1/2	0 - 6
			88/6	1/2	0 - 2
			88/6	3/1	0 - 1
			88/6	3/2	0 - 1
			170	-	0 - 3
			703	-	0 - 18
			758	-	0 - 4
			760	2	0 - 3

[फा. सं. आर-31015/50/02-ओ.आर-II]

हरीश कुमार, अवर सचिव

New Delhi, the 30th January, 2003

S. O. 374.—Whereas by notifications of the Government of India in the Ministry of Petroleum and Natural Gas numbers S.O.1496, dated the 1st May 2002 and S.O. 3154, dated the 3rd October,2002 published in Part II, section 3, sub-section (ii) of the Gazette of India, dated the 4th May 2002 and the 5th October 2002 respectively and issued under under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962) (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land specified in the Schedules appended to these notifications for the purpose of laying pipeline for transportation of petroleum products from crude oil terminal at Mundra Port in the State of Gujarat to Bathinda in the State of Punjab through Mundra-Bathinda crude oil pipeline by Guru Gobind Singh Refineries Limited (a subsidiary of Hindustan Petroleum Corporation Limited);

And, whereas copies of the said Gazette notifications were made available to the public on the 23rd October, 2002;

And whereas no objections were received from the public to the laying of the pipeline;

And whereas the Competent Authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Central Government;

And whereas the Central Government, after considering the said report and on being satisfied that the said land is required for laying pipeline, has decided to acquire the right of user therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date of publication of the declaration in the Guru Gobind Singh Refineries Limited (a subsidiary of Hindustan Petroleum Corporation Limited), free from all encumbrances.

SCHEDULE

Tehsil Ellenabad District : Sirsa State : Haryana

Sr. No.	Name of Village	Hadbast No.	Khasra No.	Part Hissa No. (if any)	Extent Kanal - Marla
1	2	3	4	5	6
1	MITHISURERA	110	21/4	-	0 - 13
			21/22	2/2/1	0 - 1
			21/22	2/2/2	0 - 5
			65/25	2	0 - 1
			274	3	0 - 1

1	2	3	4	5	6
2	KHARISURERA	111	15/5	-	2 - 14
			15/6	-	0 - 14
			55/16	2	2 - 5
			58/20	1	0 - 4
			58/21	4	1 - 14
			77/1	1	2 - 5
3	MITHANPUR	112	83/19	2	0 - 1
4	MAMERA	131	88/20	1	2 - 9
			88/20	2	0 - 3
			120/3	1	2 - 6
			120/19	2	0 - 9
			208	2	0 - 9
			282	2	0 - 3
			768	-	0 - 5
			799	-	0 - 3
5	MAUJUKHERA	133	33/24	2/1/1	0 - 1
			33/24	2/1/2	0 - 1
			33/24	2/2/1	0 - 2
			33/24	2/2/2	2 - 4
			46/16	1/1	0 - 4
			46/16	1/2	0 - 9
			46/16	2/1	0 - 1
			46/16	2/2	1 - 17
			47/2	1	0 - 6
			55/5	1	0 - 1
			71/15	-	1 - 12
	MAUJUKHERA (Contd..)	133 (Contd..)	73/25	2	1 - 7
			73/27	-	0 - 11
			74/9	2	0 - 18
			88/5	1/1	0 - 2
			88/5	1/2	2 - 13
			88/6	1/1/1	0 - 5
			88/6	1/1/2	0 - 6
			88/6	1/2	0 - 2
			88/6	3/1	0 - 1
			88/6	3/2	0 - 1
			170	-	0 - 3
			703	-	0 - 18
			758	-	0 - 4
			760	2	0 - 3

[No. R-31015/50/02-O.R.-II]
HARISH KUMAR, Under Secy.

वस्त्र मंत्रालय

नई दिल्ली, 9 जनवरी, 2003

का. आ. 375.—केन्द्रीय सरकार, (संघ के शासकीय प्रयोजनों के प्रयोग के लिए) राजभाषा नियम, 1976 के नियम 10 के उपनियम 4 के अनुसरण में, वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालय को जिसके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :

1. सैंट्रल कॉटेज इण्डस्ट्रीज कॉरपोरेशन ऑफ इंडिया लि.
टेंपल टॉवर 672, अन्नासलाई, नन्दनम्,
चेन्नई - 600 035

[संख्या ई. 11016/1/99-हिन्दी]

सुधीर भार्गव, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, the 9th January, 2003

S. O. 375.—In pursuance of Sub-Rule 4 of rule 10 of the Official Language (Use for official purposes of the Union), Rules, 1976 the Central Government hereby notifies the following offices under the Ministry of Textiles , whereof more than 80% staff have acquired working knowledge of Hindi :

1. Central Cottage Industries Corporation of India Limited.
Temple Tower, 672, Annasalai, Nandnam,
Chennai – 600 035

[No.E-11016/1/99-Hindi]

SUDHIR BHARGAVA, Jt. Secy.

श्रम मंत्रालय

नई दिल्ली, 3 जनवरी, 2003

का. आ. 376.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय डब्ल्यू. सी. एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर (संदर्भ संख्या 51/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/01/2003 को प्राप्त हुआ था।

[सं. एल-22012/67/98-आई. आर. (सी.-II)]

एन. पी. केशवन, डैस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 3rd January, 2003

S.O. 376.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 51/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 02/01/2003.

[No. L-22012/67/98-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT : SHRI B.G. SAXENA,

Presiding Officer

REFERENCE NO. CGIT : 51/2002

THE SUB AREA MANAGER, W.C.L.

AND

SHRI BABA RAO M. DAPURKAR

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute vide order No. L-22012/67/98/IR(CM-II) dt. 22-01-99 on the following schedule.

SCHEDULE

"Whether the action of the management of Pipla Sub Area of M/s WCL in dismissing the workman Sh. Babarao Marotirao Dapurkar, T.M.H. Token No. 2192 w.e.f. 5/7-01-94 is legal and justified? If not, what relief the workman is entitled?"

This reference was sent to C.G.I.T. Jabalpur on 22-01-99, 10-11-99 was fixed for submission of Statement of Claim by the workman. He did not submit Statement of Claim at Jabalpur. The file was received at C.G.I.T. Nagpur in July, 2002. Neither the workman submitted any Statement of Claim nor anybody appeared from the side of the union to contest the case though the case has been adjourned several times from August, 2002.

As no Statement of Claim has been submitted by the workman either through his union or through his advocate, no relief can be granted to him. The workman also did not turn up in this Court on any date i.e. 6-8-2002, 16-09-2002, 21-10-2002 and 13-12-2002.

Order

The workman Babarao Marotirao Dapurkar did not turn up to contest the case and no Statement of Claim has been filed by him. The reference is therefore disposed of for want of prosecution.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 3 जनवरी, 2003

का. आ. 377.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय डब्ल्यू. सी. एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर (संदर्भ संख्या 268/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/01/2003 को प्राप्त हुआ था।

[सं. एल-22012/67/2000-आई. आर. (सी.-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 3rd January, 2003

S.O. 377.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (1947 of 1947), the Central Government hereby publishes the award (Ref. No. 268/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 02/01/2003.

[No. L-22012/67/2000-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

SHRI B.G. SAXENA, **Presiding Officer**

REFERENCE NO. CGIT : 268/2000

THE GENERAL MANAGER, W.C.L.

AND

SHRI KASHINATH C. SAWARKAR

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause (d) of

Sub-section (1) and Sub-section 2(A) of Section I0 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-22012/67/2000/IR (CM-II) dt. 21-08-2000 on the following schedule.

SCHEDULE

"Whether the action of the management of Western Coalfields Ltd. through it's Sub Area Manager, Pipla Sub Area, Pipla & General Manager, Nagpur Area, Nagpur in dismissing /terminating the services of Sh. Kashinath C. Sawarkar, Clerk Gr. II (LDC), Pipla Colliery, Distt. Nagpur w.e.f. 17-02-99 is legal, proper and justified? If not, to what relief the said workman is entitled?"

The workman Kashinath C. Sawarkar has submitted Statement of Claim on 28-09-2000. He has mentioned in the Statement of Claim that he joined service as Casual Mazdoor, Category-1 from 19 March, 1975. He was promoted as Clerk Grade-III in 1984. He was again promoted as Clerk Grade-II in 1995. The chargesheet was issued to him on 16-11-98 while he was working in Computer Section of Silwara Colliety. It is alleged that he increased the number of working days of 2 Loaders Hari Santosh and Kaka Gulab. Kaka Gulab worked for 3 days in may, 1998 and was paid wages for 25 days. In June, 1998 he worked for 6 days and was paid wages for 26 days.

Hari Santosh, , Loader worked for 12 days in May, 1998 and paid wages for 22 days.

The workman says that the attendance of the Loaders was marked in MT/C Section of WCL. The Munshi used to fill up Form No. 4. Form No. 10 was prepared on the basis of the Form No. 4. He did not record the attendence. He was checking the wagesheet of the workers in Computer Section.

The Enquiry Officer did not record the statement of Kaka Gulab or Hari Santosh during enquiry. The enquiry started on 07-12-98 and was completed on 21-1-99. He was sick from 07-12-98 to 06-01-99. He joined duty on 13-01-99. So 5 (five) dates in enquiry were fixed while he was ill.

On 21-01-99 he appeared in enquiry and the enquiry was concluded same day without recording the statement of any witness from the side of management.

No original document was submitted by the management representative during the enquiry. He was dismissed from service from 17-02-99. The enquiry was not conducted fairly. Even the list of the witnesses and the list of the documents on which the management wanted to rely upon during enquiry, was not supplied to him. He had completed 24 years service in 1998 and his dismissal is illegal as no charge was proved against him. He claimed reinstatement with full backwages.

The management contested the case and mentioned in Written Statement that the workman Kashinath Sewarkar was involved in several acts of mal practices, fraud, negligence, cheating, undue influence, gross violation of rules. He was also involved in acts of violence with his colleagues. On the basis of various complaints he was dismissed after enquiry.

It is also mentioned in Written Statement that on 02-12-98 he was informed about enquiry. On 5 date fixed in the enquiry, he was absent. On 21-01-99 he attended the enquiry and the same day the enquiry was concluded.

Both the parties submitted oral and documentary evidence before this Tribunal. They have also filed Written Arguments through their advocates.

I have considered the entire oral and documentary evidence on record.

From the side of the workman his affidavit has been filed. The workmen Kashinath Sawarkar was cross examined by the advocate of management A.S. Mulchandani on 16-01-2002. The management submitted affidavit of Rajeev Prasad Sharma, Personal Manager of WCL. He was cross examined on 14-06-2002 by the advocate of the workman.

As per chargesheet dt. 16-11-98 the undernoted charges were framed against the workman for the act of misconduct in terms of Certified Standing Orders of WCL :

Charge No 1-26.1—Theft, fraud or dischonesty in connection with the employer's business or property.

Charge No. 2-26.13—Tampering with the company's records with ulterrior motives.

The management in Written Statement has mentioned that various complaints were received by the management regarding the misconduct of workman Kashinath Sawarkar on which the enquiry started. The management has not submitted any complaint which was alleged to have been received by the management before this Court. It is also not mentioned in any oral or documentary evidence by the management as to who had made these complaints about the misconduct of the workman. When the complaint was received by the management concerning this enquiry? What allegations were made in that complaint?

Thus the management has not produced any document to show as to what complaint was made to any Officer of the WCL and what order was passed by the Officers of the management on the complaint. Even the name of the person who made complaint is not mentioned anywhere either in the Written Statement dt. 02-01-01 or in the affidavit filed by Shri Rajeev Prasad Sharma, Personal Manager dt. 19-04-02. Thus there is no document on record to show on which basis the enquiry started against the workman Kashinath Sawarkar.

The management witness Rajeev Prasad Sharma also does not say anywhere that this enquiry was initiated by the Sub Area Manager, Pipla–Suo moto. Thus there was no basis for conducting enquiry.

Only one witness, Rajeev Prasad Sharma has been produced before this Tribunal to prove the charges against the workman. Rajeev Prasad Sharma did not participate in the enquiry proceedings against the workman. He had no personal knowledge in which way the Enquiry Officer handled the enquiry proceedings against the workman. He is a formal witness. He was not concerned with the preparation or checking of the attendence record of Kaka Gulab or Hari Santosh. His statement also does not show that he had seen any original document regarding the attendence of these Loaders. His statement also does not show that he anytime checked the work of the preparation of statements of salary by the workman. He says that the excess amount paid to Kaka Gulab and Hari Santosh was recovered by the management from the salary of these two Loaders.

The enquiry was conducted by Arun Khobragade, Enquiry Officer. The Enquiry Officer did not appear in this Court to prove the enquiry report. The counsel for the management has admitted that the enquiry report does not bear any date. Thus it is not clear as to when the Enquiry Officer recorded the enquiry report and when he submitted his enquiry report to Sub Area Manager.

From the perusal of the enquiry report it is evident that the Enquiry Officer based his findings on one document Form-'C' Register where-in day to day attendence of Loader, Kaka Gulab and Hari Santosh was recorded. He did not call for the Clerk who recorded the attendence in Form-'C'. Thus during enquiry even this document Form-'C' on which the finding is based, was not proved by any witness. The workman has mentioned that he had not recorded the attendence of Kaka Gulab and Hari Santosh. The Munshi who prepared Form-4 regarding attendence of Kaka Gulab and Hari Santosh was not examined during the enquiry proceedings. Thus the attendence of these two Loaders was recorded in MT/C Section of WCL and Form-4 was prepared by Munshi. None of these witnesses was called by the Enquiry Officer to establish as to how many days Kaka Gulab and Hari Santosh actually worked in the Colliery in the month of May and June, 1998.

The management's case is—that there was difference in the working days in the documents prepared for the attendence in Form-4 and Form-10. Attendence is recorded in Form-4 and the wages are calculated in Form 10. In cross examination on 14-06-02 Shri Rajeev Prasad Sharma, Personal Manager of WCL—the witness of management clearly says that he does not know the names of the persons who prepared Form-4 and Form-10. His statement is as under :

"I do not know the name of the persons who prepared the Form-4 and Form-10."

The workman was preparing the wage bills. Kaka Gulab and Hari Santosh are still working in Pipla Colliery. The workman Kashinath Sawarkar had requested Enquiry Officer to call them in enquiry proceedings. The Enquiry Officer had not noted that any oral request was made to him for calling them.

Thus the management has not given any reasons as to why the statement of Kaka Gulab and Hari Santosh were not recorded during enquiry.

The management has also not explained any reason as to why the person who prepared the attendence in Form-4 was not examined during the enquiry. The clerk who recorded the attendence of Kaka Gulab and Hari Santosh, Loaders in MT/C Section of WCL and the Munshi who filed up Form No. 4 were not examined by the Enquiry Officer during the enquiry. No reason is given by the management for not examining these witnesses during the enquiry proceedings. As I mentioned above the Enquiry Officer only had seen Form-'C' Register for day to day attendence. He did not call the witness who prepared this record of attendence during the month of May, 1998 and June, 1998 for Hari Santosh and Kaka Gulab.

In the above circumstances the finding of the Enquiry Officer is not based on satisfactory evidence. The enquiry can not be considered fair and impartial. The workman Kashinath Sawarkar has denied the allegations made against him. He has stated that he was working in Computer Section and had not recorded the attendence of Kaka Gulab and Hari Santosh. He has also stated that he was not given opportunity to defend himself and the enquiry was concluded in a day.

No evidence has been produced by the management to prove the charge of any theft or fraud or dishonesty on the part of the workman.

The workman has also stated that he did not tamper any record. There is no evidence to show that the workman was making excess payment to Kaka Gulab or Hari Santosh regularly for several months. In the case of Hari Santosh the payment is concerned with the salary of one month i.e. May, 1998.

There is no evidence on record that the workman Kashinath Sawarkar received any amount from Hari Santosh and Kaka Gulab for making payment of excess salary to them. When these is no evidence that Kashinath derived any monetory gain by this mistake in the attendence sheet, no motive for any misconduct stands proved against him. The management also does not say that the workman Kashinath was transferred from the post of Bill Clerk to any other Clerical post in any other section or department of the Colliery after June, 1998 on receiving any complaint by the management.

In view of the above evidence the charges framed against the workman Kashinath Sawarkar have not been proved from any reliable evidence produced by the management.

The enquiry report is not based on any reliable or satisfactory evidence. Thus the enquiry proceedings can not be considered fair and impartial.

The termination of the workman Kashinath Sawarkar on the basis of the enquiry report of Shri Arun Khobragade, Enquiry Officer w.e.f. 17-02-99 is illegal and unjustified.

ORDER

The action of the management of WCL through it's Sub Area Manager Pipla Sub Area and General Manager, Nagpur Area, Nagpur for dismissal from service of Shri Kashinath C. Sawarkar, grade-II, L.D.C. of Pipla Colliery w.e.f. 17-02-99 is not legal, proper or justified.

As the dismissal of the workman Kashinath C. Sawarkar is illegal and unjustified, he is directed to be reinstated in service w.e.f. 17- 02-99 on his original post with continuity in service. He shall also get 50% payment of his back wages.

The reference is answered accordingly.

Date : 27-11-2002

B. G. SAXENA, Presiding Officer

नई दिल्ली, 3 जनवरी, 2003

का. आ. 378.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय डब्ल्यू. सी. एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर (संदर्भ संख्या 60/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/01/2003 को प्राप्त हुआ था।

[सं. एल-22012/80/96-आई. आर. (सी.-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 3rd January, 2003

S.O. 378.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 60/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 02/01/2003.

[No. L-22012/80/96-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT SHRI B.G. SAXENA, PRESIDING OFFICER

REFERENCE NO. CGIT : 60/2002

W.C.L.

AND

THE GENERAL SECRETARY, BHARTIYA KOYLA KHADAN MAZDOOR SANGH

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause(d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-22012/80/96/IR(C-II) dt. 12-11-97 on the following schedule.

SCHEDULE

"Whether the following demands raised by the BKK Mazdoor Union, Nagpur vide their Charter of Demands dated 12-09-95 are legal and justified :

(I) Deployment of Workers on the jobs as per their designation/ Cadre only (Demand No.3)

(II) Payment of wages for the period of suspension to the workers (Demand No. 5)

(III) Payment of difference of wages for officiating in higher category to 94 employees who were later on regularised on the higher category jobs on which they were officiating vide WCL Nagpur Order No. 93/1594-1638 dated 31-08-93 (Demand No. 8)

(IV) Reinstatement of 76 trainees/apprentices (list enclosed as Annexure) whose services were terminated by the management (Demand No. 18).

This reference was sent to C.G.I. T. Jabalpur on 12-11-97. The file of this case was received at C.G.I.T. Nagpur in July, 2002. The notices were issued to both the parties for submitting their Claim and documents by 13-08-02.

On 13-08-02 both the parties absented. The case was adjourned to 07-10-02. On this date also the workman did not turn up nor any Claim was filed by the General Secretary of B.K.K.M.S. Union. The case was again adjourned to 04-12-02. The union of the workmen did not submit any Statement of Claim. As the union representative is not appearing in this Court though several dates have been given and no Statement of Claim has been filed, the reference is disposed of for want of prosecution.

ORDER

The union of the Bhartiya Koyla Khadan Mazdoor Sangh did not submit any Statement of Claim, hence no relief can be granted.

The reference is disposed of for want of prosecution.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 3 जनवरी, 2003

का. आ. 379.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय एफ. सी. आई. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ (संदर्भ संख्या 155/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-01-2003 को प्राप्त हुआ था।

[सं. एल-22012/103/2000-आई. आर. (सी.-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 3rd January, 2003

S.O. 379.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 155/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on 02-01-2003.

[No. L-22012/103/2000-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT :

RUDRESH KUMAR, PRESIDING OFFICER

I.D. No. 155/2000

Ref. No. L-22012/103/2000/IR(CM-II)
dated : 19/21-9-2000

BETWEEN

The State Secretary, Bhartiya Khadya Nigam Karmchari Sangh, 5-6, Habibullah Estate, Hazratganj, Lucknow (espousing cause of Smt. Pushpa Srivastava)

AND

Sr. Regional Manager, Food Corporation of India 5-6, Habibullah Estate, Hazratganj, Lucknow.

AWARD

By order No. L-22012/103/2000/IR(CM-II) dated: 19/21-9-2000, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the State Secretary, Bhartiya Khadya Nigam Karmchari Sangh, 5-6, Habibullah Estate, Hazratganj, Lucknow (espousing cause of Smt. Pushpa Srivastava) and the Sr. Regional Manager, Food Corporation of India, 5-6, Habibullah Estate, Hazratganj, Lucknow for adjudication.

The reference under adjudication is as under :

"WHETHER THE ACTION OF THE FCI MANAGEMENT IN NOT MAKING FINAL PAYMENT OF CPF AND ALSO FAMILY PENSION W.E.F. 07-12-97 ALONGWITH INTEREST TO SMT. PUSHPA SHRIVASTAVA WIFE OF LATE SH. ANIL CHANDRA, AG-II (D) IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF SHE IS ENTITLED?"

2. The facts of the case are not disputed that Smt. Pushpa Srivastava in the wife of Late Anil Chandra who died on 7-12-97 during service. She was admittedly given compassionate appointment by the management of Food Corporation of India as messanger. She has admitted of having received gratuity amounting to Rs. 1,45,364.50 in the year 2000 vide cheque Nos. 258723 dated 10-5-2000 and 261787 dated 3-7-2000 and also, C.P.F. amounting to Rs. 3,11,093.00 vide cheque Nos. 471940 dated 20-1-2000, 471941 dated 20-11-2000, 471942 dated 20-11-2000 and 471943 dated 20-11-2000.

3. Thus, her entire claim stands satisfied. As regards family pension, the management has already forwarded papers to the Zonal Office (M), New Delhi and the same is under process. The processing of Family Pension takes time. Smt. Pushpa Srivastava present before the Tribunal informs that she is not inclined to contest the case any further as the Family Pension may be granted later after due processing and requests for closing the case. The management also agrees to expedite processing of the Family Pension.

4. In view of payments made to the workman there remains no dispute to be resolved. She had received payments earlier and so is not entitled to any interest.

5. Accordingly, in light of the facts stated above, a no dispute award is given.

LUCKNOW

17-12-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 3 जनवरी, 2003

का. आ. 380.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय एफ. सी. आई. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक-विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर (संदर्भ संख्या 32/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-01-2003 को प्राप्त हुआ था।

[सं. एल-22012/103/एफ/93-आई. आर. (सी.-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 3rd January, 2003

S.O. 380.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation the management of FCI and their workman, which was received by the Central Government on 02-01-2003.

[No. L-22012/103/F/93-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT:

SHRI B. G. SAXENA, PRESIDING OFFICER

REFERENCE NO. CGIT: 32/2001

FOOD CORPORATION OF INDIA

AND

THEIR WORKMEN

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2 (A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-22012/103/F/93-IR (C-II) dt. 28-6-93 on following schedule.

SCHEDULE

"Whether the action of the management of Food Corporation of India, Nagpur, in not giving notice under Section 9-A of I.D. Act, 1947 before making change in office timings at F.C.I. Ajni Depot, Nagpur is proper and justified? If not, to what relief the workmen concerned are entitled to?"

This reference was sent by Ministry of labour, New Delhi to the C.G.I.T., Jabalpur on 28-6-93. The file remained pending in C.G.I.T., Jabalpur upto August, 2001 i.e. for more than 8 years.

This case was received in August, 2001 from Jabalpur and notices were issued to the parties.

In the above reference the workmen had raised the dispute through their union. It is alleged that the workmen of F.C.I. were working for 6 and ½ hours from 10.00 A.M. to 5.00 P.M. with a lunch break of ½ hour from 1.00 P.M. to 1.30 P.M. Whereas the departmental labours were working for 8 hours i.e. from 8.30 A.M. to 5.30 P.M. with lunch break of 1 hour from 12.00 noon to 1.00 P.M.

The Regional office, Mumbai issued a notice under Section 9-A of ID Act dt. 04-06-91 and proposed the change in working hours of Depot Staff, Nagpur from 8.30 A.M to 4.00 P.M. with lunch break of 1 hour from 12.00 hours to 1.00 p.m w.e.f. 16-08-91.

The union has raised the dispute that 21 days notice was not given which is mandatory, hence the action of the management is illegal as it amounts to change the service condition of the employees. It is also alleged that although the services of the workmen were utilised by the management in persuance of their order dt. 08-08-91 but no payment of synchronisation allowance has been made.

The management contested the case that notice dt.04-06-91, Annexure-'A' was issued by the management but no objection was received from any quarter till 24-06-91 i.e. till expiry of notice period of 21 days. The Regional Office, Mumbai had issied final order dt. 02-07-91 revising the timing of the Depot staffs working at Nagpur from 8.30 A.M to 4.00 P.M with lunch break of 1 hour from 12.00 noon to 1.00 P.M as per notice dt. 04-06-91.

I have heard the representative of the union and the management and have perused the oral and documentary evidence on record.

Narendra Shukla, the representative of the union had submitted affidavit on 09-12-99 and mentioned therein that the working hours of Depot Staffs at Nagpur was 10.00 A.M. to 5.00 P.M. with 1/2 hour break for lunch from 1.00 P.M. to 1.30 P.M. vide order dt. 08-08-91 the working hours have been changed. The working hours of Depot Staffs have been increased from 6 and 1/2 hours to 8 hours. The Depot Staffs of Ajni, Nagpur has worked from 8.30 a.m to 5.30 p.m w.e.f. 16-08-91. The management did not prefer to cross examine the witness. The letter No. ALCN/8/CAI/4/91-1, Nagpur dt. 08-08-91 is as under :

"In pursuance of Regional Office, Bombay's letter No. IR/6 (3)/ 91-RO(M), dated 18th July 91 (Xerox copy enclosed), the working hours of all Depot Staffs of Ajni, Nagpur are hereby changed as detailed below, for bringing uniformity in their working hours with the Labourers due to Departmentalisation of Labourers at Nagpur Depot."

Existing working hours	**New timing hours**
10-00 am to 5-00 pm with half an hour Lunch break 1-00 pm to 1.30 p.m.	8-30 an to 5-30 pm with Lunch break of one hour from 12 Noon to 1.00 pm.

The above changes will come into force w.e.f. 16th August, 1991.

This letter clearly shows that the working hours were changed from 16-8-91. Another letter No. ESTT/32(10-A)/84-85 dt. 29-7-92 has been filed in which it is mentioned that Depot Staffs working at Ajni Depot are directed to work from 8.30 A.M. to 4.00 P.M with lunch break of 1 hour from 12.00 noon to 1.00 P.M.

From the letter dt. 8-8-91 it is clear that the change in the working hours were effected from 16-8-91. In view of the above fact the management was required to give the 21 days notice before making any change in the working hours. Management submitted the affidavit of Shri Jacob Mathew, Regional Manager dt. 11-2-2001 but did not produce him for cross examination in this court. No other witnesses were produced by the management in support of the written statement.

In view of the above evidence on record the management is required to give proper notice under Section 9-A of the ID Act.

The action of the management of F.C.I. Nagpur in not giving notice under Section 9-A of the ID Act before making change of the office timings at F.C.I. Ajni Depot, Nagpur is not proper and justified.

ORDER

The action of the management of F.C.I. Nagpur in not giving proper notice under Section 9-A of ID Act before making change of office timing Depot Staff of F.C.I. Ajni Depot, Nagpur is not proper and justified.

The reference is answered accordingly.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 3 जनवरी, 2003

का. आ. 381.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय नागपुर (संदर्भ संख्या 154/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-01-2003 को प्राप्त हुआ था।

[सं. एल-22012/107/92-आई. आर. (सी.-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 3rd January, 2003

S.O. 381.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.154/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 2-1-2003.

[No. L-22012/107/92-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

SHRI B.G. SAXENA, Presiding Officer

Reference no. CGIT : 154/2002

THE GENERAL MANAGER, W.C.L.

AND

SHRI RAGHUNATH & OTHERS

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-22012/107/92-IR(C-II) dt. 8-7-92 on following schedule.

SCHEDULE

"Whether the action of the management of General Manager (N), W.C.Ltd., Jaripatka, Nagpur, in terminating the services of Shri Raghunath, Kanhaiyalal Hiralal and Baban Laxman Hiralal, is legal and justified ? If not, to what relief the concerned workmen are entitled to ?"

This reference was sent to C.G.I.T., Jabalpur by the Ministry of Labur on 8-7-92. The workmen had submitted the Statement of Claim on 10-4-96 through the union representative Shri G. V. R. Sharma. This file was received by transfer in this Court in October, 2002.

Nobody appeared from the side of workmen Raghunath, Kanhaiyalal Hiralal and Baban Laxman Hiralal to contest the case in this Court i.e. C.G.I.T. Nagpur. G.V.R. Sharma, the union representative did not appear in this case though notice was issued to the General Secretary of R.K.K.M.S. Union on 7-10-02. Shri A. K. Sashi Advocate for W.C.L. moved application today that the dispute has been settled between the parties through their settlement dt. 26-12-2000. All the workmen who had filed the Statement of Claim have been reinstated in service as per the terms of settlement. He has also filed copy of settlement dt. 26-12-2000.

As the matter has been settled between the parties, there is no dispute pending now between the workmen and the management, hence no further orders are required.

ORDER

The parties have settled the dispute on 26-12-2000, hence no dispute is pending now for adjudication. The reference is thereof disposed of as no dispute matter.

B.G. SAXENA, Presiding Officer

नई दिल्ली, 3 जनवरी, 2003

का. आ. 382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. आई. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय कोलकाता (संदर्भ संख्या 29/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-1-2003 को प्राप्त हुआ था।

[सं. एल-22012/122/96-आई०आर० (सी. II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 3rd January, 2002

S. O. 382.—In pursuance of Section 17 of the Industrial Disputes, Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 29/1997) of the Central Government Industrial Tribunal-cum-Labour- Court, Kolkata as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of CIL and their workman, which was received by the Central Government on 2-1-2003.

[No. L-22012/122/96-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA.

Reference No. 29 of 1997

PARTIES:

Employers in relation to the management of Dankuni Coal Complex

AND

Their Workmen.

PRESENT:

Mr. Justice BHARAT PRASAD SHARMA, Presiding Officer.

APPEARANCES:

On behalf of Management : Mr. R.N. Majumder, Advocate with Mr. S. Mukherjee, Advocate and Mr. D. Mukherjee, Advocate

On behalf of Workmen : Mr. A. Bhadury, representative of Dankuni Coal Complex Employees Union. Mr. Saibal Mukherjee, Advocate for Rashtriya Coal Mazdoor Sangh.

State : West Bangel Industry : Coal.

Dated: the 23rd December, 2002.

AWARD

By Order No. L-22012/122/96-IR(C.II) dated 11/15-7-1997 the Central Government in exercise of its power under Section 10(1) (d) and (2A) of the Industrial Dispute referred the following dispute to this Tribunal for adjudication

> "Whether the action of the management of Dankuni Coal Complex of Coal India Limited, Calcutta in curtailing annual paid holidays from 18 days to 8 days and increasing the number of working hours from 37 1/2 to 48 per week is legal and justified ? If not, to what relief are the workmen entitled?"

2. The present dispute has been raised by the two unions of the Dankuni Coal Complex (DCC in short) a subsidiary of the Coal India Ltd. regarding change in their service condition by reduction of their number of holidays from 18 to 8 and increase in the working hours from 371/2 to 48 per week.

3. From the written statement of one of the union, Rashtriya Coal Mazdoor Sangh (RCMS in short) it appears that DCC is a unit of the Coal India Ltd. which is a Govemment of India Undertaking. It is stated that the Company employs more than 660 person in different shifts. It is stated that the workman of DCC had been enjoying the annual paid holidays of 18 days in a calender year since its very inception. It is also stated that the officers stationed at Calcutta including the Liasion Office of the DCC have been enjoying the festival holidays of 18 days. It is also stated that all the subsidiary offices of Coal India Ltd., are providing the same benefit of annual paid holidays of 18 days to their employees. It is further stated that all of a sudden by a letter dated 8-12-1984 the management of the Campany addressed to the Secretary of the Rastriya Colliery Mazdoor Sangh intimated that for the year 1985 only 8 holidays would allowed as annual paid holidays instead of 18 days as available earlier. It is further stated that on receipt of the letter the than union, i.e., Rashtriya Colliery Mazdoor Sangh raised objection against such chnage. In the said letter the union also raised the grievance that reduction of quantum of holidays made by the management was being done without any substantial benefit to the workmen. It was also pointed out that while the other employees posted at Calcutta Offices were enjoying the same facilities, it was being curtailed only for the workmen of DCC, which was discriminatory. It is stated that in the aforesaid circumstances, discoarse was opened regarding different issues of dispute including the issue of annual paid holidays between the management and the union representatives, which concluded in a settlementon 20-5-1985. It is further stated that to maintain industrial peace and harmony the then union, Rashtriay Colliery Mazdoor Sangh accepted the terms and conditions

stipulated in the settlement dated 20th May, 1985 for the time being. It is stated that according to the aforesaid settlement the workmen of DCC posted at Dankuni would be entitled to 8 annual paid holidays, out of which 26th January, 15th August and 2nd October were to be treated as compulsory holidays with effect from 1-5-1985. It is stated that further according to the terms of the agreement the employees who were earlier enjoying 18 annual paid holidays shall be entitled to one addtional increment on account of reduction in the number of annual holidays. However, at a subsequent stage, it was found that this compensatory benefit earned in terms of the aforesaid settlement were being enjoyed by a limited number of workmen who were in service since prior to the date of settlement and used to enjoy 18 annual paid holidays prior to signing of the settlement. Therefore, the persons who entered service after 20-5-1985 were not getting the compensatory benefit, i.e., one additional increment offered by the employer in the settlement. Further, it is stated that sense of deprivation and injustice croped up among the employees on account of the settlement dated 20-05-1985 and the circumstances forced the employees to file written appeal to the management on 23-08-1986. It was prayed in the appeal that the existing 18 annual paid holidays in a calendar year should be restored. It is further stated that the points of the dispute regarding annual paid holidays were ultimately discussed in a meeting held on 28-12-1988 between the representatives of the management and the representatives of the Rashtriya Colliery Mazdoor Sangh the union. In that discussion it was demanded by the union that the 18 annual paid holidays in a calendar year should be restored and in order to expedite the matter the union issued a letter on 15-1-1990 to the management stating therein the intention to terminate the terms of the settlement since it was not beneficial to the interest of the workmen. Again, another letter in this connection was written on 20th January, 1990 to reiterate the demands. Later on 02-02-1990 another letter was addressed to the management by the union. The union clearly stated that the settlement will stand cancelled from 17-03-1990. Further, it is stated that the aforsaid settlement dated 20th May, 1985 was concluded in violation of the specific guidelines of the National Coal Wage Agreement-III, which was in operation at the relevant time. It is stated that the existing 18 annual paid holidays in each calendar year was prevelant in the Company all along. It is stated that on 1st January, 1983 which was the date of operation of National Coal Wage Agreement-III and prior to 8th December, 1984 when the office order was issued, the workmen were enjoying 18 annual paid holidays in a year. It is stated that it was further clear that the management had violated the provisions of National Coal Wage Agreement-III arbitrarily and whimsically by curtailing annual paid holidays of the workmen. Further, it is stated that in course of joint discussion with the union held on 28-12-1988 the management had almost admitted the justification of the union's demand for 18 paid annual holidays for all the workmen, but nothing could be done in view of the existence of the tripartite settlement. Thereafter, the workman felt aggrieved and an industrial dispute was raised before the Assistant Labour Commissioner by this union by letters dated 19-03-1990, 02-06-1990, 07-01-1991 and 23-08-1993. However, the management could not be shakened from their reasonings and did not concede to the demand of the union for restoration of the 18 annual paid holidays without any justification. It is further stated that in similar manner the management enhanced the period of working hours from 37½ to 48 hours per week which was prejudicial to the interest of the workmen of DCC. It is stated that the workmen of the Company were earlier enjoying the duty hours of 37½ hours per week, but it was suddenly changed and enhanced to 48 hours per week by this tripartite settlement. It is stated that as the workers felt aggrieved against this enhancement of working hours, they drew the attention of the management in 1986 by a letter dated 23-08-1986. However, inspite of the demands made by the workmen regarding annual paid holidays as well as the usual working hours in a week, the management did not pay any heed. It is stated in this connection that since the settlement dated 20th May, 1985 was not beneficial to the interest of the workmen, the union decided to terminate the settlement and issue a notice on 15-01-1990 under Section 19 (2) of the Industrial Disputes Act and also sent a corrigendum on 20th January, 1990. Thereafter the union also wrote another letter on 02-02-1990 and thereafter the matter came before the Assistant Labour Commissioner (Central), Calcutta through a letter dated 19-03-1990. The meetings for conciliation were held in which the management adopted hardend attitude and did not relent to the demand and, therefore, the conciliation proceeding could not succeed and the failure report was sent to the appropriate Government and the present reference has been made. In this circumstance, it has been prayed on behalf of the union that the action of the management in curtailing the annual paid holidays and also in increasing the number of working hours should be held to be illegal and void and the facilities and privileges enjoyed by the workmen should be restored.

4. Another Union, Known as Dankuni Coal Complex Employees Union has also filed a written statemment in the same lines and similar analogies have been advanced. However, it has been stated by this union that the alleged settlement dated 20-05-1985 was not the outcome of an industrial dispute, because no such industrial dispute was ever raised by the union which was in existence at the relevant time. It has also been stated that the said sattlement is also in contravention of Section 25 J of the Industrial Disputes Act, and, therefore the entire settlement is unfair and improper and it curtails the privileges and rights of the workmen being enjoyed by them from before.

It has been stated in this connection that at the material time, i.e. in the year 1985 when the settlement was arrived at, the only union in existence was Rashtriya Colliery Mazdoor Sangh and the representatives of this union had signed the agreement without application of mind. The workmen were aggrieved with this agreement and constituted another union, which is the present union and it represents the interest of the majority of the workmen in the Company. It has been stated that the manner in which the agreement was procured by the management is improper and the agreement was also arrived at in illegal manner and, therefore, the decision of the management to enhance the working hours from 37½ to 48 hours per week is illegal, unjustified and improper and it amounts to snatching the rights being enjoyed by the workmen from before without any justification. Accordingly, this union has also prayed that the action of the management be declared to be illegal and improper and the facilities in the matter of weekly working hours as also the annual paid holidays be restored.

5. A written statement has also been filed on behalf of the management to counter the claims of the two unions. It has been pleaded, *inter alia*, on behalf of the management that the reference is not maintainable, because no dispute was properly raised by the unions with the management of the Company. It has also been stated that the reference as framed is vague and not clear and it has been made regarding a decision of administrative nature. So far as the merit of the case is concerned, it has been stated on behalf of the management that DCC is an integrated coal chemical project and is also an unit of the South-Eastern Coalfields Ltd. which happens to be one of the subsidiaries of the Coal India Ltd. It is stated that South-Eastern Coalfields Ltd. is a Company incorporated under the Companies Act and they are responsible for day-to-day management of the units including DCC. It has also further been stated that the DCC happens to be a factory within the meaning of the Factories Act, 1948. It is stated that the foundation stone of DCC was laid by the then Prime Minister, Mrs. Indira Gandhi on 29th December, 1981 at its project stage the construction was being done by M/s. Heavy Engineering Corporation. However, commercial production in the Company started in May, 1990. It is further stated that while the project work was going on 29 persons were engaged by the management of DCC on monthly basis to look after the establishment as well as plant side and other 11 persons were engaged on daily-rate basis. It is also further stated that prior to 20th May, 1985 the aforesaid 29 workman used to enjoy 18 holidays per year and they used to peform duty for 37 ½ hours in a week, but the remaining 11 daily-rated workers were allowed only 8 days of holidays per year and their working hours were 37 ½ hours in a week. So, it is further stated that in order to remove the anomaly the management of DCC decided to introduce 8 days holidays per year in respect of the workers and, accrodingly, on 8th December, 1984 the management informed the Secretary of the Rashtriya Coal Mazdoor Sangh that from the year 1985, 8 days of holidays per year would be introduced in respect of the monthly as well as daily-rated workers. It is stated that thereafter the union, Rashtriya Coal Mazdoor Sangh raised a dispsute against the proposed introduction of 8 days of annual holidays per year in respect of monthly-rated workmen and the matter was ultimately referred to the Labour Directorate and the conciliation proceedings were held and tripartite agreement was entered on 20th May, 1985 in presence of the conciliation officer. It is stated that in the aforesaid agreement three important clauses were as follows :—

(1) Workmen of DCC posted at Dankuni henceforth shall be entitled to 8 days holiday, out of which 26th January, 15th August and 2nd October, will be compulsory holidays with effect from 1st January, 1985.

(2) It is agreed that the employees who are enjoying 18 paid holidays shall be granted an additional increment with effect from 01-05-1985.

(3) It is also agreed that the workmen at DCC will henceforth be paid overtime allowance at double rate of the normal wages whenever they are entitled to overtime.

It is stated in this connection that prior to the agreement the workmen were being paid overtime allowance below double rate. Therefore, with the implementation of the agreement dated 20th May, 1985 the workmen were benefited both in getting one additional increment and also in extra overtime allowance. It is stated that a further tripartite agreement was also entered into on the same date, i.e., on 20th May, 1985 relating to working hours and it was decided that the duty hours of the DCC will be 48 hours a week and 8 hours a day with four shifts and with 30 minutes lunch break and Sunday will be weekly holiday. It was also decided that the employees affected by the settlement shall also be entitled to a lumpsum payment of Rs. 250/-. It is stated that it is evident from the agreement dated 20th May, 1985 that all the workmen which included both monthly-rated and daily-rated were granted lumpsum payment of Rs. 250/-. It is stated that the aforesaid agreement was duly implemented and the workmen started and continued to enjoy the benefits of the said agreement. It has been stated in this connection that section 51 of the Factories Act permits introduction of 48 working hours in a week. Further, it is stated that the workmen who were engaged after 20th May, 1985 were not entitled to claim the aforesaid benefits granted to the workmen engaged since prior to 1985, because the facilities and privileges enjoyed by those workmen engaged since prior to 1985 were withdrawn and so far as the workers joining after 1985 are

concerned, they joined under the present conditions knowing fully well that their working hours shall be 48 hours per week and they shall enjoy only 8 annual paid holidays in a year. It is further stated that the condition of employees and workmen in the field of collieries are governed by the National coal Wage agreement coming into force from time to time. It is stated when the N.C.W.A.-II came into existence on 01-01-1979 the mention of 7 national paid holidays plus I extra i.e., 8 was provided and the same continued to be in force in NCWA-III and IV also which came into operation subsequently. However, at the relevant time NCWA-III was in operation. It has been stated that the workman who enjoyed benefits in terms of the aforesaid agreement cannot approbate and repprobate specially because of the fact that one increment they enjoyed which is a long term benefit and they also enjoyed a lumpsum payment of Rs. 250/- for introduction of 48 hours of work per week. It is stated that the employees who joined after 1985, as such, cannot claim such benefit. Therefore, it has been stated that the demands of the employees in this background cannot be justified. However the averments made in the written statements of the two unions have been denied parawise and it has been asserted that because the changed service condition was made applicable to the workmen employed in DCC only the terms of the tripartite agreements do not apply to the employees of the Liason Office of Calcutta and, therefore, they are enjoying the same benefits which was prevailing from before the agreements. It has also further been asserted that DCC is a factory within the meaning of the factories act and is governed by the provisions of the Factories Act, 1948, but the workmen of Liason office are not covered within the definition of the workmen of the factories act and, therefore, Section 51 of the Factories Act has no application in their case. It has also been asserted that the working hours of all the mines and factories under the Coal India Ltd. and its subsidiaries are 48 hours a week and, annual holidays are also 8 days per year and therefore, there is nothing strange that these conditions have been made applicable to the workers of DCC. It has been clearly asserted that because when the management wanted to introduce uniformity in the service conditions of the two categories of workmen, i.e., the workmen engaged by the Company at project stage on monthly basis and the persons engaged on daily-rate basis, the union raised dispute over the same and the dispute was referred to the conciliation officer in whose presence after due deliberation the agreement was arrived at and the representatives of the union signed it and thereafter the agreement was made applicable. It has, therefore, been submitted that the decision regarding a reduction in the number of yearly paid holidays and enhancement in the working hours is not an arbitrary action and it is on the basis of the tripartite agreements which are binding on all the workmen, including the workmen who subsequently joined the Company. It has been submitted that there is no basis in challenging the validity of the order of the Company regarding the changes and till any further agreement is signed, the terms of the agreements have to be applicable and the workmen have to accept and abide by it. In this context it has been submitted on behalf of the management that the reference is fit to be decided accordingly and the workmen represented by the two unions are not entitled to any relief whatsoever.

6. Both the parties adduced evidence in support of their respective stands. The evidence has been led oral as well as documentary. So far as the documents are concerned, large number of documents have been brought on record on behalf of the workmen,. but the management has got marked onely one document, Ex. M-1 which is the xerox copy of the certificate granted by the Chief Inspector of Factories, West Bengal in which licence has been granted to C.I.L. regarding Dankuni Coal Complex, which has been treated as a factory within the definition of the Factories Act, 1948.

7. So far as the documents of the workmen are concerned, Ext.W-1 happens to be a letter sent by the Superintending Engineer of the DCC to the Secretary of the Rashtriya Colliery Mazdoor Sangh on 8th December, 1984 by this letter the management had asked for suggestion of the union regarding the alternate dates of holidays. Ext.W-2 is the order of the management dated 8th December, 1984 by which the total number of annual paid holidays were specified to be 8 only. This order was actually the bone of contention. Ext.W-3 is a letter issued by the Secretary of the Rashtriya Colliery Mazdoor Sangh to the General Manager, DCC on 15-12-1984 by which the union had objected to the decision of the management regarding reducing the number of holidays as contained in the office order, Ext.W-2. Ext.W-4 is the office order dated 4-3-84 in which 18 holidays as prevalent at that time were shown. Similar is the office order dated 27-12-1982, Ext.W-5. Ext.W-6 is the repeatation of Ext. W-5 in which the total number of holidays were shown to be 18 in 1982. Ext. W-7 is the memorandum of settlement dated 20th May, 1985 arrived at between the management and the Rashtriya Colliery Mazdoor Sangh, which is under challenge. By this agreement the annual paid holidays were fixed at 8 only and it was agreed that the workmen of DCC shall be paid overtime allowance @ double the normal wages henceforth. It was also stated in this settlement that the other benefits than what is covered in this settlement shall stand withdrawn from the date of application, i.e., 1-5-1985. Ext. W-8 is the second memorandum of settlement dated 20th May, 1985 by which the total working hours per week was decided to be 48 and 8 hours a day in 6 working days and the shift was also described. In this agreement also it was decided that the employees affected by this settlement will also be paid Rs. 250/- lumpsum once only. Ext. W-9 is the representation of the workmen to the Chief General Manager of DCC dated 23-8-1986 in which the objection was raised regarding reduction in number of holidays and

enhancement in the working hours and prayer was made to restore the original working hours and number of holidays. Ext. W-10 is the minutes of meeting held on 28-12-1988 between the management and the representative of RCMS, the union. In this meeting various demands on behalf of the workmen were considered and from paragraph 11 it appears that so far as the demands of the union regarding restoration of 18 days of paid holidays and 37½ working hours, it was stated that it has been done in accordance with the agreement and, therefore, there was no question of entering not any dialogue on this issue. Ext. W-11 is the notice purported to have been issued by the Assistant Secretary of the RCMS to the management of DCC on 15-1-90 under Section 19(2) of the Industrial Disputes Act by which the union disclosed its intention to rescind or cancel the settlement. Ext. W-12 is a letter of the Assistant Secretary of the RCMS to the Chief General Manager, DCC intimating the decision of the union to terminate the settlement as per notice under Section 19(2) of the Act. Ext. W-13 is the duplication of the letter. Ext. W-11. Ext. W-14 is again duplication of the same letter, Ext. W-12. Ext. W-15 is the letter of the Assistant Secretary of the RCMS to the management of DCC to intimate them that they shall treat the weekly working hours as it stood before the agreement. Similarly, Ext. W-16 is the letter of the Assistant Secretary of the RCMS intimating the management that they shall treat the 18 paid holidays in a calendar year to be in vogue. Ext. W-17 is the letter of the Secretary of the RCMS to the Assistant Labour Commissioner (Central) requesting him to intervenes in the matter of dispute regarding restoration of the weekly working hours and yearly paid holidays. It is dated 19-3-1990. Ext. W-18 is also a duplication of the same letter, Ext. W-17. Ext. W-19 is the representation of the management before the A.L.C. (C) in response to the notice regarding the dispute raised by the workmen. It is dated 24-4-1990. Ext. W-20 is the letter addressed by the Secretary of the MCMS to the ALC(C) on 2-6-1990. It is the comment on the letter of the management in this regard. Ext. W-21 is again the comment in detail over the representation of the management before the Conciliation Officer. Ext. W-22 is the letter of the Secretary of RCMS to the Regional Labour Commissioner making representation of the grievances and requesting the RLC to take a firm stand in the matter during negotiation. It is dated 23-8-1993. Ext. W-23 is the letter of the Secretary of RCMS to the RLC dated 7-1-1991 requesting him to consider the demand of restoration of the annual paid holidays and weekly working hours. Ext. W-24 is a similar letter by the Secretary to the RLC dated 23-8-1993. Ext. W-25 is the order sheet dated 14-6-1985 in which it was pointed out that some of the workmen were found not working according to rules. Ext. W-26 series are the minutes of the different sittings of the conciliation proceedings on different dates. Ext. W-27 is the failure report sent by the ALC to the Secretary to the Govt. of India, Ministry of Labour on 19-3-96. Ext. W-28 is the extract of Chapter-VI of the National Coal Wage Agreement - III which contains provisions regarding annual leave. It appears that in paragraph 6(1) it has been mentioned that the prevelant practice in respect of earned leave, casual leave and paid festival holidays will, however, continue, if more favourable. Similar provisions in NCWA-V is Ext. W-28/1. Ext. W-29 is the memorandum of settlement dated 20-5-1985. It is also duplication of the agreement earlier marked Ext. W-7. Ext. W-29/1 is the duplication of the agreeement, Ext. W-8. Ext. W-29/2 is the office order dated 15th June, 1985 by the Superintending Engineer(PM) of DCC by which the order regarding payment of Rs. 250/- lumpsum was communicated to the different department and sections.

8. So far as oral evidence is concerned, the unions have examined altogether four witnesses. WW-1 is Mihir Kumar Ghosh who claimed himself to be a member of the DCC Employees union, i.e., the second union. According to him he was initially appointed as a casual worker in 1981 and his service was regularised in 1982. According to him he has been working in the clerical grade since then. He further stated upto 20th May, 1985 they were enjoying annual paid holidays for 18 days and their duty hours happens to be 37½ hours per week. According to him the paid holidays and working hours as above were uniform in all the office of the complex. He further stated that since 20th May, 1985 the number of holidays were reduced from 18 days to 8 days and working hours were increased to 48 hours from 37½ hours. According to him this kind of decision was taken by the management for the workmen of DCC at Dankuni only and the workmen of other branches of the complex were enjoying the previous benefits. He further stated that on 20th May, 1985 a tripartite settlement was arrived at between the management of DCC and Rashtriya Colliery Mazdoor Sangh in presence of the Conciliation Officer. He stated that his union was not a party to the said settlement and on the relevant date he was a member of the RCMS, because the present union was not in existence at that time. According to him the present union to which he belongs was formed in 1985. In his cross-examination, he stated that the production in the DCC actually started in 1990 and the working hours and holidays were decided in settlement of 20-05-1985. He futher stated that different categories of workmen were employed in the Company at the relevant time. He also further stated that the commissioning of the project was for the purpose of producing different kinds of coal products. He also further admitted that at times provisions of Mines Act are also applicable to DCC, but he could not give any detail of such provision. He has also further stated that he happened to be a member of the union which was a party to the settlement and stated that he had submitted a joint application regarding the settlement after the settlement was arrived at. He also further admitted that after the settlement the same was enforced in the Complex. He further admitted that according to the settlement an additional

increment was given with effect from 1st May, 1985 and he also received the increment, but under protest. He has also admitted that the overtime was being at double the rate of wages. Ultimately, he has also admitted that the workmen are governed by the settlement dated 20-05-1985.

WW-2 is Manas Kumar Mukherjee a workman of DCC and he happens to be the General Secretary of the DCC Employees Union, i.e., the second union. According to him the union was formed in 1987. He further stated that there was one Rashtriya Colliery Mazdoor Sangh in 1985 and on 20th May, 1985 there was a settlement between the management and the said Rashtriya Colliery Mazdoor Sangh which was a tripartite settlement. He also further stated that at that time he happened to be a member of the said union. He further stated that prior to settlement the meeting of executives was not convened. He has further stated that he knew Netai Poddar who was the Secretary of the Rashtriya Colliery Mazdoor Sangh, Dankuni Branch at the relevant time and he still continues to be in service and he also happens to be a member of the DCC Employees Union. He was stated that prior to the settlement they used to work for 37½ hours in a week and enjoyed 18 days of holidays per year. According to him the working hours after the settlement have been increased to 48 hours per week and holidays have been reduced to 8 per year. He has also further stated that after the settlement the said Netai Poddar himself had raised the dispute before the management regarding this change. So, according to him he has grudge against the change in the facilities. In this cross-examination, he has stated that the aforesaid Netai Poddar happened to be signatory to the tripartite settlement. According to him the settlement was applicable to the workmen of Dankuni only. He further stated in his cross-examination that in 1990 the Sales Officer of DCC at Calcutta came into existence and there was one Liason Office on the date of settlement. He stated that those employees were also covered by the settlement. He further stated that the management had made the settlement applicable to the Liaison Office by issuing a notice, but when the employees of the said office raised objection, it was not made applicable. He has also admitted that the signature of one A.K. Mukherjee who happened to be General Secretary of the Rashtriya Colliery Mazdoor Sangh was there on the settlement. He has stated that through the letter, Ext. W-5 the RCMS had served notice to the management asking them to rescind the settlement. He has no knowledge whether the said settlement has been superseded by any settlement and according to him the terms and conditions of the settlement are still in force. He also admitted that he accepted the financial benefit. He also admitted that by this settlement the rate of overtime was doubled. He has further admitted that in both the settlements some financial benefits were given to the workmen and illustrates it by saying that one increment was granted by settlement and lumpsum amount was granted by another settlement. It is important to note that as stated earlier, there were two different settlements on the same date-one related to reduction of holidays from 18 to 8 and other was regarding enhancement of working hours from 37½ to 48 hours in a week. He has further stated that he happens to be a member of the DCC Employees Union from the very beginning and this union has also entered into settlement with the management, but he could not give any detail in this regard. When he was asked whether he has any knowledge whether there was any resolution by the general body regarding such settlement by the union, he expressed his ignorance and he stated that he cannot produce any such paper.

WW-3, Netai Chandra Poddar is the person who is described by other witnesses as Netai Poddar who happened to be an office bearer of the Rashtriya Colliery Mazdoor Sangh. He has stated that he was the Secretary of the union, Rashtriay Colliery Mazdoor Sangh in 1985 and there was a settlement on 20-05-1985. He has stated that before the settlement he had not taken consent of the general members, but verbally he had informed the members that he was going to sign the settlement. He further stated that he cannot say if any dispute was raised before the Labour Commissioner in this regard, though he was a signatory to the aforesaid settlement. In his cross-examination, he has stated that the facilities made available to the workmen as per the settlement were allowed to the workmen. However, according to him, some workers had raised objection before him about the settlement, but he said that he was bound by it. According to him the persons raising such objection had also received the benefit of the settlement. He also further admitted that the other union was not even in existence at the time of the aforesaid settlement.

WW-4, Utpal Mitra also happens to be an employee of DCC since 1981. According to him it was on the basis of settlement with the Rashtriya Colliery Mazdoor Sangh of which he happened to be a member. According to him RCMS came into existence after the agreement and at the time of agreement no consent was taken. He further stated that after the RCMS came into existence, he became its member and started protesting against the agreement. According to him the settlement was also terminated by his union. According to him in other subsidiaries of Coal India Ltd. the working hours is 37½ hours per week and the same working hours are applicable to Calcutta Office of DCC also. In his cross-examination, he has stated that the signatory on behalf of the Rashtriya Colliery Mazdoor Sangh in the settlement was Netai Chandra Poddar, i.e., WW-3. According to him he happened to be the Secretary of the union at that time. He also further stated that one A.K. Mukherjee was also the signatory who was the General Secretary of that union. According to him both of them are still in employment. He has stated that whereas the said A.K. Mukherjee happens to be the General Secretary of the present union, known as Rashtriya Coal

Mazdoor Sangh, but Natai Chandra Poddar happens to be a member of another union. He has further stated that the National Coal Wage Agreement says that there shall be no curtailment regarding the festival holidays and according to him at the time of settlement in question, NCWA-III was in existence. He has further stated that he does not know about the working hours of the mines of the South-Eastern Coalfields Ltd. He further admitted that he got Rs. 250 lump sum as per the settlement and has got additional increment in terms of the settlement. Further, the witness admitted that the manufacturing process in DCC had started in 1990 and DCC was declared a factory after the settlement. He has also admitted that prior to starting of the production, there were workmen engaged in the Company and some of them were also doing manual work. According to him the installation of the machines etc. started in 1980 and it was being done by the Heavy Engineering Corporation. He has further stated that he had filed joint representation to the management, but no notice was given to the management in this regard. However, according to him a notice was given in 1990 for termination of the said settlement.

9. The witness on behalf of the management is MW-1, S.B. Das Mahapatra who happens to be the Personnel Manager of the DCC. He has stated that DCC produces bye-products of coal and the Company is governed by the provisions of the Factories Act, 1948. He has stated that on 29th December, 1981 the foundation stone of the factory was laid and M/s. Heavy Engineering Corporation was commissioning the plant. According to him the commercial production started in May, 1990. He further stated that prior to start of production, the Company was in project stage. He further stated that after commissioning of the project and completion of the work, some technical and non-technical employees were appointed. He further stated that prior to start of production, the workmen were doing office work for the project. He has further stated that the work was fixed in shifts and everybody had to work in a particular shift of 8 hours. He further stated that DCC w the [illegible] Coal In ia Ltd. at the project stage and now it is under South-Eastern Coalfields Ltd. According to him thare are different offices at different places belonging to CIL and in these establishments there is system of 5 days of working, but in the production unit, it is 6 days a week. According to him in DCC the working days are 6 in a week. According to him in the offices of the Coal Mines also there is 6 days a week working. He has stated that he is conversent with the agreement dated 20-5-1985 and according to the agreement, the working hours was fixed at 48 hours a week and 8 days were decided to be festival holidays. According to him the system is applicable to Coal Mines also. He has stated further that according to this agreement all the workmen were given one additional increment plus lump sum payment of Rs. 250. He has stated that regarding the payment, no objection was ever raised by anyone and according to him as per agreement, overtime payment was also doubled. He has stated in his cross-examination that the signatory to the agreement was Rashtriya Colliery Mazdoor Sangh which was the only union in existence at the time. He also further stated that the Rashtriya Colliery Mazdoor Union itself had raised a dispute subsequently. According to him there was no question of reduction of wages by this agreement. He also stated that there were two settlements signed on the same date. He has stated that the dispute was raised by the Colliery Mazdoor Sangh before the management, before the matter was referred to the conciliation. He has stated that there was no notice published under Section 9A of the Industrial Disputes Act before entering into agreement. However, he admits that no paper has been filed to show that Rashtriya Colliery Mazdoor Sangh had raised any dispute before agreeing to sign the settlement.

10. Many of the facts are, therefore, clear and admitted. It is a fact that DCC was initially started as a project in 1981 and was commissioned for production for the first time in May, 1990. It is also admitted that DCC is an unit of CIL and presently under the South-Eastern Coalfields Ltd. and it is meant for production of bye-products of coal. The management has asserted and it has also been admitted by a witness for the unions that the DCC has been declared to be a factory. In this regard Ext. M-1 has also been filed. It is also admitted that prior to the agreement of 20th May, 1985 the working hours of the workmen of DCC were 37½ hours per week. It is also admitted that the annual paid holidays were 18 per year prior to the agreement. It is also admitted that the agreement was signed on 20th May, 1985 by the management and the representatives of the only union in existence at the relevant time, i.e., the Rashtriya Colliery Mazdoor Sangh. It is also admitted that by one agreement the number of annual paid holidays were reduced from 18 to 8 and by another agreement the working hours were enhanced from 37½ hours to 48 hours per week. However, both in the written statement as well as in their evidence the witnesses have stated that no formal dispute was raised by the union before the agreements were signed and in this view of the matter, it has been submitted that in absence of any dispute being formally raised, there was no question of signing any agreement, therefore, the agreements were not in accordance with law. But, if the settlements, Exts. W-7 and W-8 are examined it will become clear that is has been stated that the Regional Secretary, Rashtriya Colliery Mazdoor Sangh had raised an industrial dispute for alleged reduction of wages for a group of employees working at DCC who were hitherto enjoying more holidays. So, the union representative requested the RLC(C), Calcutta to intervene in the matter and, accordingly, the negotiations were held in conciliation and the agreements were sign d. It is also important to note in this connection that it appears from the documents filed on behalf of the unions themselves that on 8th December, 1984 an office order was issued by

the management of DCC by which 8 holidays were declared to be paid annual holidays for the year 1985. It also appears from Ext. W-1 that a letter to this effect was also addressed by the management to the Secretary of the then union, Rashtriya Colliery Mazdoor Sangh. It further appears from Ext. W-3 that the Secretary of the said union had raised objection regarding the said office order by which there was reduction in number of paid holidays. Therefore, it becomes clear that after the order declaring 8 annual paid holidays was issued on 8-12-1984 the Secretary of the then union, Rashtriya Colliery Mazdoor Sangh raised objection in this regard and he had also sent a copy of this letter to the RLC. Thus, it is clear that the dispute regarding the implementation of 8 annual paid holidays per year was challenged by the then union and the matter had also reached the RLC(C), Calcutta to whom the copy of the letter addressed to the management by the Secretary of the union was sent. It is, therefore, to be considered whether it can be treated as proof of raising of a dispute. What is actually the raising of a formal dispute. In my view, the very fact that the union raised objection regarding certain decision taken by the management and asked them to reconsider it indicates that the dispute was raised because it releated to the conditions of service of the workmen. Thereafter the negotiations started in the conciliation proceeding before the ALC and the negotiations fructified and matured into an agreement. Therefore, it cannot be said that the two agreements signed by the management and the union on 20-3-1985 were without any formal dispute being raised. Ordinarily, there is no possibility of such thing happening. So, the objection of the unions to this effect that the agreement was arrived at and signed without any formal dispute being raised cannot be accepted.

11. So far as the norm for deciding the working hours of the workmen and the total number of annual paid holidays are concerned, these are the terms of service of the workmen, no doubt, but the terms of service can be fixed by negotiation and mutual agreement, though it cannot be beyond the provisions of the law. In this connection, it may be noted that so far as the Mines Act is concerned, Section 30 lays down that workers can be utilised for work upto 8 hours per day in a shift and not more than 48 hours per week. Similarly, the Factories Act, 1948 Section 51 lays down that the maximum hours of work cannot be more than 48 hours. So, it is obvious that work can be taken from the workman upto 48 hours per week, either in case of factory or a mine. There is no doubt about it that the Company presently happens to be a factory under the Factories Act. Prior to the commissioning of the factory also, it would have been at least treated as a mine being a component of the Coal India Ltd. So, in any view of the matter, fixing the duty hours of 48 hours a week cannot be said to be contravention of any law or in excess of the provisions.

12. Similarly, so far as the fixing 8 annual paid holidays is concerned, it appears to be in order to give better result to the newly established factory and the management though earlier tried to introduce it without the consent of the workmen, and the union agreed to enter into negotiation before the Regional Labour Commissioner and the two settlements were signed which are tripartite. Such settlements have got to be applicable to all the persons whether they were working from before the agreement or after the agreement was signed.

13. So far as the benefits provided in the agreements are concerned, the grievance of the workmen is that these facilities have not been made available to the workmen who joined after these agreements, but the management has very clearly stated that because at the time when the agreements were signed the workmen were working for 37½ hours per week and there was enhancement of working hours by fixing it at 48 hours the workman were supposed to be compensated. Similarly, the workmen who were in service enjoying the facility of 18 annual paid holidays were affected by this agreement that the annual paid holidays were reduced to 8 only. It has been contended that in this view of the matter, the management wanted to compensate such workers by giving some financial benefit. For reduction in the number of annual paid holidays it was decided that the workmen shall be given one additional increment and also the rate of overtime shall be enhanced to double the usual rate and so far as the persons affected by enhancement in the working hours are concerned, the management and the union agreed to a sum of Rs. 250 as lump sum to paid to the workers who were affected by it. It has been rightly contended on behalf of the management that it is obvious that these financial benefits were provided in the agreements for compensating for the loss caused to the workmen. But, so far as the workmen joining after the signing of the agreements are concerned, they were not getting any such benefit from before and the question of their suffering any loss which required compensation did not arise. It has been rightly submitted on behalf of the management that the workmen who joined the Company after these agreements, were aware of the fact that the total annual paid holidays shall be 8 only and the working hours shall be 48 hours per week or 8 hours per day and therefore, the question of their being compensated on this account did not arise and it cannot be said that the decision of the management is discriminatory or arbitrary.

14. The unions challenged the order of the management based on the agreements and have said that they had expressed their intention to rescind the agreement also, but in this case it is important to note that the reference does not relate to the validity or otherwise of the agreements whether the schedule of the reference only speaks of whether the decision of the management regarding reduction in annual paid holidays and enhancement in working hours is justified or not. The reply of the management in this connection is that it is on the basis of tripartite settlement arrived at in due course of conciliation

and, therefore, it cannot be said to be arbitrary. It has been contended on behalf of the management that if the Tribunal tries to consider the validity and legality of the two settlements, it will be going beyond the terms of refrence, which the Tribunal has no authority to do. In this connection, it will be pertinent to observe that such dispute appears to be unnecessary and indicates the mind set of the working class of this country. The workers of a company or organisation or a mine should give their cooperation and might as far as possible so that the company or the factory progresses properly leading to the ultimate progress of the country, but the working class has now developed a mentality of only seeking maximum benefit from their employer. The result is that the employer companies and factories are becoming financially over-burdened and turning sick. This causes hindrances to the industrial growth and economic growth of the country and such tendencies should not be encouraged.

15. In this background, after considering the entire evidence, I come to this conclusion that the demands of the workman in this case do not appear to be justified.

There also does not appear to be any reason to see that the decision of the management in implementing the terms of the two agreements can either be unjustified or improper.

The workman have not been asked to work beyond 48 hours as prescribed in the Mines Act and the Factories Act. Therefore, the fixing of working hours as 48 per week cannot be unreasonable and unjustified. So far as the number of annual paid holidays are concerned, it should be borne in mind that only observing holidays cannot contribute to the growth of the organisation concerned or to the nation as well and if the workmen decide to work on maximum number of days that may give sufficient strength to the employer organisation and ultimately the employer organisation may decide to give some further benefit, if the finance permits, but if the financial condition of the employer organisation itself becomes worse, then the workmen cannot expect any benefit. So, such kind of controversy cannot lead to healthy growth of the industry and cannot also create an atmosphere of work. The industrial peace happens to be the pre-requisite of industrial growth.

16. Considering all these aspects, I find that the dispute in this case is meaningless and it does not carry any weight. There is nothing improper or illegal in the order of the management. The reference is accordingly decided. The workmen are held not entitled to any relief what-so-ever.

Dated, Kolkata,
The 23rd December, 2002.

B. P. SHARMA, Presiding Officer

नई दिल्ली, 3 जनवरी, 2003

का. आ. 383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, एफ. सी. आई. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद (संदर्भ संख्या 120/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-01-2003 को प्राप्त हुआ था।

[सं. एल-22012/142/99-आई.आर (सी.-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 3rd January, 2003

S. O. 383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 120/2002) of the Central Government Industrial Tribunal-cum-Labour-Court Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of FCI and their workman, which was received by the Central Government on 02-01-2003.

[No. L-22012/142/99-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNALCUM-LABOUR-COURT AT HYDERABAD

PRESENT:

SHRI E. ISMAIL, Presiding Officer

Dated : 25th November, 2002

INDUSTRIAL DISPUTE NO. 120/2002

(Old I.D. No. 56/1999 transferred from Industrial Tribunal-I, Hyderabad)

BETWEEN

Smt. Yerikala Samrajyam,
3rd Ward, Near Kambala
Bhavani Veedhi, Sattenapalli,
Guntur Distt.—522 403. ....Petitioner

AND

The District Manager,
Food Corporation of India,
District Office, Arunadalpet,
Guntur. ....Respondent

APPEARANCES:

For the Petitioner : Sri K. Srinivasa Rao, Advocate

For the Respondent : M/s. B. G. Ravindra Reddy & S. Prabhakar Reddy, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/142/99/IR(CM-II) dated 31-8-1999 referred the following dispute under Section 10(1)(d) of the I.D. Act, 1947 for adjudication to the Industrial Tribunal-I, Hyderabad between the management of Food Corporation of India and their workman. In view of Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 this case has been transferred to this Tribunal bearing No. 56/99. The reference is,

SCHEDULE

"Whether Smt. V. Samarajyam was the workman of FCI at Sattenpali, Guntur Distt. During the period from 1982 to 1985? If so, whether the action of the management in denial to regularize her services is legal and justified? If not, to what relief is the workman entitled ?"

The reference is numbered in this Tribunal as I.D. No. 120/2002 and notices issued to the parties.

2. Inspite of several adjournments given from 6-9-2002 for filling of documents for eight adjournments including 25-11-2002 the petitioner has not turnedout with documents. The petitioner has failed to produce any evidence in support of her claim. Hence, there is nothing on record to support her case. Therfore, the reference is ordered against the petitioner and it is held that the petitioner is not entitled for any relief.

Accordingly a 'Nil' Award passed, Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 25th day of November, 2002.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 3 जनवरी, 2003

का. आ. 384.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, एफ. सी. आई. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद नं. 1 (संदर्भ संख्या 234/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-01-2003 को प्राप्त हुआ था।

[सं. एल-22012/144/94-आई.आर. (सी.-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 3rd January, 2003

S.O. 384.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 234/1994) of the Central Government Industrial Tribunal-cum-Labour- Court, Dhanbad No. 1 as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of FCI and their workman, which was received by the Central Government on 02-01-2003.

[No. L-22012/144/94-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of a reference under Sec. 10(1)(d) (2A) of the Industrial Disputes Act, 1947

Reference No. 234 of 1994

PARTIES :

Employers in relation to the management of Food Corporation of India, Patna

Vs.

Their Workmen

PRESENT :

SHRI S.H. KAZMI, Presiding Officer

APPEARANCES:

For the Employers : Shri B. M. Prasad, Advocate.

For the Workman : Shri D. Mukherjee, Advocate.

State : Bihar : Industry : Food.

Dated, the 23rd December, 2002

AWARD

By Order No. L-22012/144/94-IR (C-II) dated 6-9-1994 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Food Corporation of India in dismissing Shri Ram Swarath Singh and denying his re-instatement and also denying to award lesser punishment than dismissal is legal and justified ? If not, to what relief the concerned workman is entitled to ?"

2. Precisely, the case of the concerned workman is that intially he was appointed on 29-8-1959 as Weighment Clerk, but later he was promoted to the post of Junior Godown Keeper (Asstt. Grade-II Depot) in the year 1971. Subsequent to that he was promoted to the post of Asstt. Grade-I (Depot) in the year 1978. It has been said that during his service period the concerned workman was posted at

Food Storage Depot, Hajipur as Asstt. Grade-I (Depot) where he was charge-sheeted on 8-12-88 which was subsequently withdrawn and fresh charge-sheet under major penalty was again issued against him on 28-3-90 and thereafter the domestic enquiry was conducted. Further, it has been said that the enquiry was conducted by the Enquiry Officer without giving reasonable opportunity and also without observing the rules and procedures of the enquiry. The Enquiry Officer, it is said, submitted his report without evaluating and assessing the documents and evidence adduced on behalf of the workman during enquiry. It is said that the Enquiry Officer after conducting the enquiry submitted his report on 12-9-91 and on the basis of the said report the concerned workman was dismissed from service vide order dated 7-1-92. Against the order of dismissal, it is said, the concerned workman filed an appeal before the Zonal Manager, FCI, Calcutta, but the same was rejected by the said authority vide order dated 8-5-92 illegally and unjustifiably. It has also been said that the order of dismissal has been passed by the management without giving any show-cause notice about the proposed penalty and as such the order of dismissal was wholly illegal and unjustified. Further, the case is that the promotion of the concerned workman was ordered by the Zonal Manager, which is a kind of appointment, therefore the concerned workman could not have been dismissed by an authority subordinate to the Zonal Manager and the Senior Regional Manager is subordinate to the Zonal Manager. As in the instant case the Sr. Regional Manager passed the order of dismissal the same is without jurisdiction and void-ab-initio and the concerned workman is entitled for his reinstatement with full back wages. It has been said that the enquiry was also not fair and proper and the same was also one sided and based on imagination and hypothesis. Further, it is said that the punishment awarded to the concerned workman is disproportionate and too severe.

3. The management's case, on the other hand, as disclosed in its written statement is that the concerned workman was working as Depot Incharge/Shed Incharge of Food Storage Depot of FCI at Hajipur during the year 1987-88 and it was his duty and responsibility to ensure that proper accounting of the stock of good grains stored at Food Storage Depot was being maintained by his subordinates as well as by himself. He was the custodian of all the food grains stored in that godown. It has been said that the Regional Physical Verification Team made a surprise checking at Food Storage Depot at Hajipur on 10-8-88 for the purpose of 100% verification and weighment of the stock for detection of shortage/excess and possible loss at the said depot. It is said that the concerned workman could not make readily available the upto date book stock position as he was not ensuring regular maintenance of book stock on day to day basis as per rules of the Corporation. The depot was sealed and the concerned workman was given chance to make the book stock upto date and submit the correct position of book stock in respect of wheat, sugar, rice and empty gunny bags. The concerned workman submitted the stock position by 12-8-88 and thereafter the verification work of the stock commenced. Further, it has been said that by the P.V.Team, in course of verification of stock, the book stock, the position of different materials like, wheat, sugar, rice etc. with the help of 'O' form and the book stock position as appearing on 10-8-88 was verified. Reports were thereafter prepared indicating the shortage in the stock causing huge loss to the tune of several lakhs of rupees. The management thereafter initiated disciplinary action against the concerned workman and C.B.I. also initiated its action. It is said that after being satisfied about the existence of prima facie case against the concerned workman the management issued a chargesheet dated 21-7-90 against the concerned workman alleging the commission of serious misconduct as per the provisions of FCI (Conduct) Staff Regulations, 1971. He was charged under Rule 31(A) and 32(B) of the said Regulations alleging that he failed to maintain absolute integrity and devotion to duty in the performance of his duties as in-charge of Food Storage Depot of the Corporation at Hajipur. It was alleged that he not only caused huge loss of food grains, leading to loss of several lakhs of rupees but also showed transit loss in between 4 to 12% which has necessarily led to draw an inference that the concerned workman manouvered the matters relating to maintenance of stock position in such a manner to cause loss to the Corporation and gain to himself. It is said that after the receipt of the said charge-sheet the concerned workman submitted his reply denying the charges levelled against him and thereafter the enquiry was held. The said departmental enquiry was held fairly and properly and in accordance with principles of natural justice. After completion of departmental enquiry, it is said, the Enquiry Officer submitted his report to the management holding the concerned workman guilty of charges levelled against him. The competent authority thereafter perused the enquiry report and all the connected papers and gave a copy of the enquiry report to the concerned workman for submission of his comment so that the same could be considered at the time of imposition of penalty on him. The concerned workman submitted his representation to the disciplinary authority and the same was considered and the disciplinary authority dismissed the concerned workman by order dated 7-1-1992. It is also said that when the concerned workman filed an appeal before the Appellate Authority the same was also rejected. Lastly, it has been said that the action of the management in dismissing the concerned workman from service is legal, bonafide and justified and he is not entitled to any relief whatsoever.

In its rejoinder also the management has controverted several averments made on behalf of the workman in his written statement. It has also been said that the authority who had passed the order of dismissal was a competent authority and so the assertion made in that regard on behalf of the workman is false and baseless.

4. It is significant to point out at the very outset that during the pendency of this reference the issue as regards fairness of domestic enquiry was taken up as

preliminary issue and both sides were allowed to lead evidence in that regard. Thereafter having heard both the sides on the said issue, by order dated 31-3-2000 the then Presiding Officer held the domestic enquiry as fair and proper. Hence in view of such development the only consideration which is now required to be made for the purpose of disposal of the present reference is whether in view of the materials available on record the findings arrived at by the Enquiry Officer and the conclusion drawn by him can be taken to be bad, illegal or perverse or not so as to warrant any interference by this Tribunal.

5. It stands undenied that the concerned workman, Ram Swarath Singh being Asstt.Grade-1 (Depot) was working as Depot Incharge/Shed Incharge of Food Storage Depot of FCI at Hajipur during the year 1987-88 and it was his duty and responsibility to ensure the proper accounting of stock of food grains stored at the said depot. In short, he was the custodian of all food grains stored in that godown. It is also not denied that the surprise checking was made by Regional Physical Verification Team on 10-8-88 for the purpose of 100% verification and weighment of the stock for detection of shortage/excess and possible loss at the said depot and in course of the said verification huge shortage of wheat, sugar, rice and empty gunny bags etc. was discovered, value of which was roughly assessed as several lakhs of rupees. Precisely the following shortage/ excesses were detected :

Wheat Indg.	(-)	1885 Bags =	1695.60.000
Wheat damaged	(-)	7 Bags =	22.59.000
Sugar	(-)	29 Bags =	156.70.500
Sugar Sweeted	(-)	Nil =	163.60.000
Sugar sweeping	(-)	22 Bags =	9.98.600
Sugar juice	(-)	Nil =	2.29.000
Empty SHS/USB	(+)	991	
Damage gunny bags	(+)	659	
AT Bags Gunny Bags	(+)	170	

The P.V.Team further detected Transit losses to be on higher side ranging from 4% to 12% in some cases which on investigation by the Team was found motivated for wrongful gains.

6. The aforesaid P.V.Team thereafter submitted the report which was marked as P-2 during the enquiry proceeding and which in course of the instant proceeding has been marked as Ext. M-6/3. Subsequent to that the management initiated the disciplinary action against the concerned workman in the year 1988 itself and issued a charge-sheet against him for the alleged serious misconduct on his part. The C.B.I. also initiated action against him and pending investigation the charge-sheet issued by the management was withdrawn. No any material has been produced to show as to what happened in the said C.B.I case, but as per the workman no evidence was collected during investigation and so he was absolved from the charges by the C.B.I. Anyway, a fresh charge-sheet dated 21-7-90 was issued against the concerned workman under major penalty clauses. The concerned workman submitted his reply which was not found to be satisfactory by the management and the domestic enquiry was ordered to be held. During the enquiry altogether seven witnesses were examined on behalf of the management who all were cross-examined by the defence side. 13 items of documents including P.V.T. report dated 20-9-88 and several registers and forms etc. were also filed and exhibited on behalf of the management during the enquiry. No oral evidence was led on behalf of the workman and only two documents were filed on his behalf and were marked exhibits which were memo and letter of complaint (D-I and D-II). After completion of the enquiry the Enquiry Officer submitted his report holding the concerned workman guilty of those two charges levelled against him and on the basis of the said report the concerned workman was later dismissed from his service. Against the order of dismissal he preferred an appeal before the Appellate Authority, Divisional Manager but the same was rejected by the said authority. Industrial dispute was thereafter raised and finally the same was culminated into present reference.

7. As it is evident from the workman's written statement, it is not the case of the workman that the witnesses who were examined on behalf of the management during the enquiry were biased, prejudiced or had given false evidence. It is also not his case that the shortage as detected or discrepancy as found by the verification team was incorrect. It has also not been asserted that the concerned workman was not present during the verification or verification of stock was done behind his back or the signature which is there on verification report was not his signature. It has also not been denied that on 10-8-88 when surprise checking was done, the concerned workman could not make readily available upto date book stock position and on that date the depot was sealed and he was given chance to make book stock upto date and submit correct position of book stock in respect of wheat, sugar, rice, empty gunny bag, thereafter he submitted stock position by 12-8-88 and only thereafter verification work of the stock commenced.

During the enquiry proceeding the concerned workman virtually attributed those irregularities or discrepancies to his sub-staff, AG-II and AG-III for their non-cooperation and unfaithfullness. In course of argument in the instant case also vehemently it was urged on behalf of the workman that two shed incharges were actually responsible for the alleged misconduct as it was they who were responsible for maintenance of accounts. It has also been contended that there is no iota of evidence to prove the hand of the workman in the alleged shortage and there is no evidence that the food grains remained under the direct custody of the workman. It has also been submitted that the management during the enquiry failed to prove that the job of maintaining alleged records were specifically entrusted to the concerned workman. Quite

evidently despite being the over-all incharge of the said depot the concerned workman has tried to shift the liability and responsibility for irregularity and discrepancy upon the other two subordinate staff posted in the same depot and an impression has been sought to be created by him that in no way he can be held to be responsible for any shortage or excess of food grains in the said depot as found by the P.V. Team during the surprise checking on the aforesaid date. Considering the materials on record I have no hesitation in observing at the very outset that the argument made on behalf of the workmen in the aforesaid regard or the ground taken by him for the purpose of showing his innocence are not only unconvincing, rather completely devoid of substance. He has tried but has failed to succeed in getting himself absolved from the charges by putting the blame on others.

8. Out of seven witnesses examined on behalf of the management during the enquiry PW-2 and PW-4 were important and material witnesses, as PW-2 was the person who headed the P.V. Team and PW-4 was the person on whose initiative and report the physical verification of stock of Food Storage Depot, Hajipur was necessitated. Rest of the witnesses are the persons who either accompanied the said team or proved the documents during the enquiry, filed on behalf of the management.

PW-2, D.P. Samayar has stated during the enquiry that during the relevant period he was posted in Vigilance Section in Regional Office, Patna and he was directed by Sr. Regional Manager, FCI, Patna for conducting the physical verification of stock of Food Storage Depot, Hajipur. According to him, he was assisted by three others also and in process of physical verification he had verified the stock available at the depot on 100% weighment of stock of the depot with reference to declaration submitted by the concerned workman. He has said that the concerned workman was functioning as the Incharge of the aforesaid depot during the relevant period and he remained present althrough during the physical verification of the stock. He has mentioned the details as regards the stock of the commodities as per declaration and then stock actually found during verification. Thereafter he has mentioned about the difference in the quantities upon actual verification. He has also mentioned about shortage/excess of empty gunny bags. He identified his signature on the verification report (P-2) or (Ext.M-6/2). He appears to have been subjected to lengthy cross-examination. But the defence failed to elicit anything out of him to discredit his earlier testimony or to show that the verification of the stock done by him was defective or he failed to proceed in a manner in which he was expected to proceed while coming to the finding on excesses or shortage of stock of food grains or empty gunny bags. No any question was asked from him or any suggestion was given to him that two other subordinate staff posted in the same depot, in fact, were responsible for the maintenance of account or for proper weighment and quantity of the stock of food grains received in the said depot. Most of the defence questions appears to be upon the finding on transit loss given by PW-2. In that regard he has candidly accepted that no quantity has been shown in Ext. P-2 and only percentage was shown on the basis of R.R. and godown arrival weighment recorded by the depot. PW-4, T.N.P. Singh, on whose initiative, as stated earlier, the surprise checking of the said godown was made, has clearly stated during the enquiry that the concerned workman being the Depot Incharge was the over-all incharge of the deopt or for any loss or shortage it is the depot incharge who is to be held reponsible. Though in his cross-examination by the defence side he has said that on his occasional visit at F.S.D., Hajipur he found ledger being written by AG-II (D) and stock accounts were prepared by him in the past but later when he was asked to state about the duties and responsibility of the Depot Incharge he replied that the Depot Incharge should see all relevant records of the depot and keep administrative control on the staff posted in the depot. Further specific question was asked from him to the effect whether it is not within the realm of the responsibility of the Depot Incharge to exercise control over shed so as to ensure that nothing wrong happens there. He replied in affirmative and stated that it is the responsibility of the Depot Incharge to check all the records of the depot before the godown is closed every day and but sometime if not possible due to heavy receipt then the records are checked by the Depot Incharge that very next day. He has therefore made it clear that even if the ledger or the stock accounts are prepared by some other persons, it is the responsibility of the Depot Incharge to check all the records of the shed or depot and keep administrative control on the staff posted in the depot. Those two documents of the workmen (Ext. D-1 and D-2) which were marked exhibits in course of evidence of PW-4, in no way demolishes the charge against the concerned workman and merely on the basis of those documents innocence of the concerned workman cannot be gathered. He might have sent the report or the letter to any higher official about the prevailing state of affairs of the said depot but his responsibility of over-all control of the said depot being the incharge of the same always remainded. By taking shelter behind such letters or reports he cannot get himself freed from those responsibilities and liablility attached with his official position. During the verification he faild to explain such huge discrepancy between book stock and physical stock and it is difficult to accept that he was not aware of existing position of those entries and about the discrepancy which was detected. He furnished declaration of his stock as on 10-8-88 (Ext. P-4) for all commodities as custodian of the same and in his presence verification was carried out and during that shortage and excesses were detected. The Enquiry Officer has observed in his report that had the concerned workman taken due care and caution, the loss suffered by F.C.I. could have been avoided.

The Charge No. II contains that heavy transit losses were shown ranging from 4% to 12% falsely to mis-appropriate the food garin stock. In this context the Enquiry Officer in his report has mentioned that no spot verification

was conducted by PW-2 so as to ascertain the correctness and authenticity of the issue. For this reason the Enquiry Officer found the said charge to be partly proved as he observed that transit loss shown ranging from 4% to 12%, however, cannot be termed and treated as normal one, particularly in view of the deposition of PW-2 and also the materials produced, such finding of the Enquiry Officer also appears to be reasonable and sustainable. As it has been observed earlier also, PW-2 in his evidence has clearly accepted that in Ext. P-2 (verification report) only percentage has been shown on the basis of R.R. Register (P-9) and godown arrival weighment recorded by the Depot. In course of his cross-examination he was asked the question regarding minimum level of percentage of transit loss prescribed. He replied that the percentage of loss more than 1% is considered or deemed to be on higher side. As it is evident in R.R. Register transit loss was mentioned ranging from 4% to 12%. Certain percentage of loss may be considered as handling loss but such a high percentage of transit loss is quite unexpected and the same can reasonably be attributed to the dishonest conduct of the person concerned and his gross negligence.

9. From all the aforesaid it is evident that the charge levelled against the concerned workman for having failed to maintain absolute integrity and devotion of duty in performance of his duties as Incharge of Food Storage Depot of the Corporation at Hajipur was satisfactorily established. Thus, the conclusion with respect to the guilt of the concerned workman arrived at by the Enquiry Officer in his report does not call for any interference and the same cannot be taken to be unjustified, illegal or perverse.

10. During the argument, the learned counsel appearing on behalf of the workman also pressed the ground of the incompetency of the authority who passed the order of dismissal and illegality in appointing C.B.I. Officer as Presenting Officer on behalf of the management during the enquiry and further about the threatening given by the said C.B.I. Officer to the witnesses for making statement. Significantly, all these grounds were vehemently pressed during the arguments on preliminary point and the learned Presiding Officer while passing the order has dealt with all those grounds and rejected the same after having found these grounds devoid of substance. In view of clear and categoricial finding arrived at earlier upon the aforesaid aspect raised, it was quite unreasonable to reagitate those grounds at a later stage.

11. It has also been urged on behalf of the workman that the copy of enquiry report was not sent to the concerned workman prior to inflicting punishment of dismissal upon him. This submission also appears to have no force. It has been specifically asserted on behalf of the management in its written statement itself and the same found corroboration from other materials also that after the submission of enquiry report the Disciplinary Authority sent the enquiry report to the concerned workman after which he submitted his reply or representation also and only thereafter the order of dismissal was passed by the said authority. Apart from this in the aforesaid context from the side of the management sub-regulation 4 of regulation 59 of FCI (Staff) Regulations, 1971 has been cited which stipulates that if the disciplinary authority is of the opinion that any of the penalties specified in clauses 5 to 9 of Regulations, 1955 should be imposed on the Corporation's employee it shall make an order imposing such penalty and it shall not be necessary to give Corporation's employee any opportunity of making representation on the penalty proposed to be imposed. Even if it is taken for the moment that the enquiry report was not sent to the concerned workman, nothing has been put forward to show as to in what way the prejudice was caused to the concerned workman just on account of the said reason. Thus, it is reiterated that this ground taken is also devoid of substance.

12. Considering all the aforesaid considerations and discussions made on the basis of materials on record, finally it is concluded that the dismissal of the concerned workman or the action taken against him by the management was just and proper and the concerned workman does not deserve any relief whatsoever.

13. It has also been contended on behalf of the workman that punishment of dismissal was too severe and disproportionate to the gravity of charges as levelled against the concerned workman. From the discussions made as above it is obvious that considering the nature and gravity of misconduct levelled against the concerned workman which were duly established during the enquiry no interference is required in the matter of imposition of aforesaid penalty of punsihment. Certainly he does not deserve any leniency in the said matter. Despite being the over-all incharge of the concerned depot he failed to maintain integrity and devotion while performing his official duties and due to his undesirable and questionable conduct the management had to incur loss of several lakhs of rupees. The Hon'ble Supreme Court in its several decisions has already held that alteration or modification of punishment should be made only when the punishment as inflicted is shockingly disproportionate to the gravity of the misconduct found to be established against the concerned workman. In the instant case I am of the view that the punishment of dismissal inflicted upon the concerned workman cannot be taken to be shockingly disproportionate considering the serious nature of charges levelled against him or the misconducts which have been sufficiently found to be established.

14. The award is, thus, made hereunder :

The action of the management of Food Corporation of India in dismissing the concerned workman and denying his re-instatement and also denying to award lesser punishment than dismissal is legal and justified and the concerned workman is not entitled to any relief.

However, there would be no order as to cost.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 3 जनवरी, 2003

का. आ. 385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.बी.एम.बी. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ (संदर्भ संख्या 154/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/01/2003 को प्राप्त हुआ था।

[सं. एल-23012/2/96-आई. आर. (सी.-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 3rd January, 2003

S.O. 385.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 154/97) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BBMB and their workman, which was received by the Central Government on 02/01/2003.

[No. L-23012/2/96-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT, CHANDIGARH

PRESIDING OFFICER SHRI S. M. GOEL

CASE NO. ID 154/ 97

Sri Ram Kumar Pal son of Shri Ram Narayan, C/o Shri Surinder Sharma Kothi No. 713 Sector-22-A Chandigarh. ..Applicant

VERSUS

The Executive Engineer, BBMP 400 KV Sub Division Bhiwani. Respondent

APPEARANCES :

FOR THE WORKMAN : SHRI SURINDER SHARMA

FOR THE MANAGEMENT : SHRI SAJAL ALHUWALIA

AWARD

(PASSED ON 27-11-2002)

Central Govt. vide notification No. L-23012/2/96-IR (C. II) dated 11th of July, 1997 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of BBMB Bhiwani in dismissing Shri Ram Kumar Pal, Chowkidar, from service w.e.f. 4-4-94 is legal and justified? If not, to what relief is the workman entitled and from which date?"

2. In the claim statement the workman pleaded that he was appointed as chowkidar with the management on 4-6-1980. He was issued a charge sheet in 1993 and he was dismissed from service on 4-4-94 without giving him any opportunity of being heard and he was not given any opportunity of cross-examination of the witnesses of the management. The findings of the enquiry officers on all the charge are contradictory to the evidence recorded during the enquiry and the enquiry officer while conducting the enquiry has not followed the principle of natural justice. Therefore, the applicant has prayed that he be reinstated in the service with back wages and all benefits as the punishment is harsh and the same is against all canons of natural justice.

3. In the written statement the management has pleaded that the workman was served with the charge sheet for forcibly occupying the quarter No. 110 in BBMB Colony Bhiwani; he assailted and abused and threatened the staff on main gate duty and interfered in the work of other employees; he was caught doing theft of energy by two gazetted officers of the Board and he also tempered with the office record of the main gate. It is pleaded by the management that proper departmental enquiry was conducted against the workman and full opportunity was given to the applicant to leave evidence and to cross-examine the witnesses of the management and the enquiry officer gave his well reasoned findings and the charges were proved against him. It is thus prayed that there is no merit in the reference of the applicant and the same be dismissed.

4. Replication was also filed by the applicant reiterating the claim made in the claim statement. It is also pleaded that charge of tempering of the office record was not mentioned in the charge sheet.

5. Arguments have been heard on the fairness of the enquiry. The enquiry proceedings have been placed on the file by the management. I have gone through the complete enquiry proceedings and have also heard the learned counsels for the parties at length. The learned counsel for the applicant has argued that the enquiry officer has not recorded the evidence of the witnesses strictly in accordance with the provisions of the Evidence Act and the applicant was not given any opportunity to properly cross-examine the witnesses of the management. Thus the enquiry is to be vitiated on this ground alone. I have gone through the enquiry proceedings in details. On 7-9-1993 the statement of Shri M.M Khan the witness of the management was recorded which has been exhibited as Ex. W4 in the enquiry proceedings. It is specifically written and signed by the workman that he has been given the opportunity to ask the questions and he has cross-examined the witnesses. Similary he has cross-examined the other witnesses produced on 7-9-1993 which are Kedar Nath Ex. W5,

H.S. Meel W6 and Vinod Kumar who were examined on 7-9-1993. One more witness Shri Inder Singh was also examined by the management and this statement was also signed by the applicant. The applicant was also examined and his statement was also recorded. Thus in my considered opinion, the workman was given full opportunity to cross-examine the witnesses of the management and he himself also appeared as witness and his statements was also recorded. It is no where pointed out by the learned counsel for the workman that he had been disallowed by the enquiry officer to ask any question or that he had not been supplied any document which he had asked. Thus in my considered opinion the applicant was given full opportunity to cross-examine the witnesses of the management and he was given full opportunity to defend himself during the enquiry proceedings.

6. The learned counsel for the workman further argued that the report of the enquiry officer is not reasoned and thus punishment imposed on the basis of such report is not sustainable in the eyes of law. He has also relied on AIR 1985 Honb'le Supreme Court page 1121 Anil Kumar Vs. Presiding Officer. I have gone through the enquiry report which in my considered opinion is based on the evidence produced by both the parties during the course of enquiry. No part of this enquiry report has been pointed out by the learned counsel for the workman as defective one. Thus in the absence of specific reason, the same can not be said that it is not based on any reason. Thus I find no force in the arguments of the learned counsel for the workman.

7. The learned counsel for the workman has further argued that the punishment of dismissal is harsh and he also relied on the authority of the Hon'ble Supreme Court in the case of Ved Prakash Gupta Vs. M/s. Delton Cables India (P) Ltd. AIR 1984 S.C. Page 914. In that case the charge against the applicant was that he abused some workers and the staff of the management. But in the case in hand, the applicant was charge sheeted for three charges which have been proved during the course of enquiry and all the three charges were of serious nature e.g. theft of electricity, trespass of Govt. flat and assault on the officers of management. Thus I find no reason to interfere in the punishment aspect of the case also.

8. In view of the above discussion, I find no merit in the reference. The same is accordingly answered against the workman. The reference is disposed off accordingly. The Central Govt. be informed.

Chandigarh
27-11-2002

S. M. GOEL, Presiding Officer

नई दिल्ली, 3 जनवरी, 2003

का. आ. 386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जे.एन.वी. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण कोटा (संदर्भ संख्या आई टी आर केस नम्बर 12/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-01-2003 को प्राप्त हुआ था।

[सं. एल-42012/5/2000-आई. आर. (सी.-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 3rd January, 2003

S.O. 386.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. ITR Case No. 12/2001) of the Industrial Tribunal-cum-Labour Court, Kota as shown in the Annexure in relation to the Industrial Dispute between the employers in relation to the management of JNV and their workman, which was received by the Central Government on 02-01-2003.

[No. L-42012/5/2000-IR (C-II)]

N. P. KESAVAN, Desk Officer

अनुबन्ध

न्यायाधीश, औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी—श्री मणि सुंदर व्यास, आर. एच. जे. एस.

निर्देश प्रकरण क्रमांक औ. न्या./केन्द्रीय/—12/2001

दिनांक स्थापित : 6-6-2001

प्रसंग :

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश
सं. एल. 42012/2/2000-आई आर (सीएम-II)

दिनांक 15-5-2001

निर्देश अन्तर्गत धारा 10(1)(घ)
औद्योगिक विवाद अधिनियम, 1947

मध्य

रामकरण मीना पुत्र श्री शंकर लाल मीणा,
द्वारा श्री बलदेव सिंह श्रम सलाहकार —प्रार्थी श्रमिक

एवं

प्रिंसिपल, जवाहर नवोदय विद्यालय, गांव एवं पोस्ट अटरू जिला बारा। —अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री बलदेव सिंह

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री बी. सी. त्यागी

अधिनिर्णय दिनांक 20-11-2002।

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासंगिक आदेश दि. 15-5-2001 के जरिये निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जाएगा) की धारा 10 (1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :—

"Whether the action of the management of Jawahar Navoday Vidhyalaya, Atroo in terminating the services of Sh. Ram Karan Meena S/o Sh. Shankar Lal Meena from Service on 18-10-99 is legal and justified ? If not, to what relief Sh. Ram Karan is entitled to?"

2. निर्देश/विवाद, न्यायाधिकरण से प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना विधिवत रूप में जारी की गयी जिस पर प्रार्थी पक्ष की ओर से अपना क्लेम स्टेटमेन्ट प्रस्तुत किया गया।

3. आज पत्रावली वास्ते पेश होने क्लेम जवाब अप्रार्थी पक्ष नियत थी, परन्तु उनकी ओर से कोई जबाव प्रस्तुत नहीं कर अप्रार्थी स्वयं प्राचार्य श्री बी. सी. त्यागी एवं प्रार्थी रामकरण मय अधिकृत प्रतिनिधि श्री बलदेव सिंह ने संयुक्त रूप से एक समझौता-पत्र प्रस्तुत कर निवेदन किया कि पक्षकारों के मध्य लोक न्यायालय की भावना से प्रेरित होकर आपसी समझौता सम्पन्न हो गया है जिसके तहत अप्रार्थी, प्रार्थी को समझौते से 15 दिन के अन्दर-अन्दर पुन: ड्यूटी पर ले लेगा व प्रार्थी भी सेवा प्रथक तिथि 18-10-99 से ड्यूटी ज्वाइन करने के दिन तक के पिछले वेतन व भत्ते आदि कोई क्लेम नहीं करेगा तथा उसे संशोधित वेतन आदि जो कि उसे 18-10-99 को मिलते थे, ड्यूटी ज्वाईनिंग की तिथि से देय होंगे। यह भी तय हुआ कि अप्रार्थी संस्थान में जब भी नियमित रिक्ति होगी, प्रार्थी को नियमानुसार प्राथमिकता दी जावेगी और उसकी पुरानी सेवा व व्यवधान उम्र में छुट्टी के लिए गिनी जावेगी। चूंकि समझौते उपरान्त पक्षकारों के मध्य अब कोई विवाद शेष नहीं रहा है, अत: समझौते के अनुरूप अधिनिर्णय अन्तिम रूप से पारित कर दिया जावे।

पक्षकारों को प्रस्तुतशुदा समझौते-पत्र की विषय-वस्तु पढ़कर सुनायी, समझायी गयी जो सही होना स्वीकार की गयी । चूंकि पक्षकारों के मध्य लोक न्यायालय की भावना से प्रेरित होकर सम्पन्न हुए उक्त समझौते उपरान्त अब कोई विवाद शेष नहीं रहा है, अत: प्रस्तुत समझौते के आधार पर समप्रेषित निर्देश/ विवाद को अधिनिर्णित कर इसी प्रकार उत्तरित किया जाता है जिसे नियमानुसार समुचित सरकार को प्रकाशनार्थ भिजवाया जावे।

मणि शंकर व्यास, न्यायाधीश

नई दिल्ली, 3 जनवरी, 2003

का. आ. 387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय एन.पी.टी.आई. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर (संदर्भ संख्या 118/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-01-2003 को प्राप्त हुआ था।

[सं. एल-42012/130/2001-आई. आर. (सी.-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 3rd January, 2003

S.O. 387.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 118/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of NPTI and their workman, which was received by the Central Government on 02-01-2003.

[No. L-42012/130/2001-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

Shri B. G. Saxena, Presiding Officer

REFERENCE NO. CGIT : 118/2002

National Power Training Institute

AND

Shri Anil Jaganlal Paroche

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute vide order No. L-42012/130/2001-IR(CM-II)) dated 09-05-2002 on the following schedule.

SCHEDULE

"Whether the action of the management of National power Training Institute represented by its Executive Director, Nagpur in continuing Shri Anil Jaganlal Paroche under suspension (whose criminal case is pending before the Court) w.e.f. 10-03-88 without conducting departmental enquiry is legal and justified? If not, to what relief the said workmen is entitled to ?"

The workman Anil Jaganlal Paroche was suspended by the management w.e.f. 10-03-88. He has moved application today that he has been allowed to join duty from 20-02-02. He therefore does not want to contest the case.

Management has also submitted order dt. 20-02-02 of Executive Director that the suspension of the workman has been revoked.

Therefore there is no dispute pending now between the management and the workman.

ORDER

As the dispute has been settled between the workman and management and the workman has joined duty and has withdrawn his claim, reference is therefore disposed of for want of prosecution.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 3 जनवरी, 2003

का. आ. 388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय एफ. सी. आई. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर (संदर्भ संख्या 28/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/01/2003 को प्राप्त हुआ था।

[सं. एल-42018/3/88-डी. IV (बी.)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 3rd January, 2003

S.O. 388.—Inpursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 28/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 02/01/2003.

[No. L-42018/3/88-D-IV(B)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

Shri B.G. Saxena, Presiding Officer

Reference No. CGIT : 28/2001

Food Corporation of India

AND

Their Workmen

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause(d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-42018/3/88-D-IV(B) dt. 03-01-89 on following schedule.

SCHEDULE

"Whether the District Manager, Food Corporation of India, Nagpur is justified in imposing the penalty of recovery of Rs. 957.88 from each of the twenty-two watchmen :

Shri—

(1) G. M. Longe	(12) V. S. Dhok
(2) V. R. Sawerkar	(13) S. B. Wayal
(3) K. D. Karadbhajne	(14) A. R Band
(4) T. D. Vyawahare	(15) D. K. Ramteke
(5) Maniram Thappa	(16) K. P. Wankhede
(6) S. B. Sirasat	(17) H. M. Smith
(7) K. G. Shende	(18) K. S. Dhone
(8) S. B. Ingole	(19) R. N. Pawar
(9) R. B. Chikane	(20) J. R. Wankhede
(10) D. A. Hajre	(21) S. S Mohiture
(11) N. G. Rangari	(22) A. R Jayawant

as amount of proportionate loss vide his order dated 23-02-88 ? If not, to what relief the workmen concerned are entitled ?"

This reference was sent to C.G.I.T., Jabalpur by the Ministry of Labour, New Delhi on 03-01-89. The reference remained pending in the Court of C.G.I.T., Jabalpur upto July, 2001 i.e. for about 12 years and 6 months. The file was received in this Court and notices were issued to the parties by C.G.I.T., Nagpur on 10-08-01 and 27-09-01 was fixed for filing affidavit by the union of the workmen. On 27-09-01 N. S. Shukla, the representative of the union filed his affidavit before C.G.I.T., Nagpur and the proceedings of the reference were taken up further in this Court. The management of Food Corporation of India through it's District Manager had imposed penalty on 22 Watchmen who were working on the godown of F.C.I. and passed order for recovery of Rs. 957.88 from each of the 22 Watchmen mentioned in the schedule for causing loss of the Wheat and Rice by theft from the godown No. 9 vide order dt. 23-02-88.

The Statement of Claim of these 22 workmen was filed by N. S. Shukla, the Secretary of F.C.I. Establishment Union. The statement of Claim was filed on 25-02-89 in the Court of C.G.I.T., Jabalpur.

It is mentioned in the Statement of Claim that the abovenoted 22 watchmen were the Class-IV employees

of the Food Corporation of India. They had no control over the foodgrains which was stocked inside the godown. Their duty was to carry out the checking of incoming and outgoing vehicles loaded with the bags of Foodgrains at the main entrance/Exit gate to ensure that the number of daks received and sent out of the premises tally with the number of daks mentioned in the Gatepasses. The godowns are managed by the District Manager, Assistant Manager, Assistant Gr-I, Assistant Gr-II and Assistant Gr-III so far as receipt and issue of foodgrains is concerned. It is the duty of Assistant Gr-I to seal the godown's lock and maintain the record while opening and closing the godowns. The seals of the godowns are checked by the Assistant Gr-I.

It is further alleged that 115 bags of Wheat and 14 bags of superfine rice were stolen from godown No. 9, Ajni Old Complex during the period from 6-9-86 to 6-10-86 in the first shift which starts from zero hour midnight to 8.00 A.M. The theft was detected on 6-10-86 by the Assistant Manager. The thieves were alleged to have made entry into depot premises through the boundary wall from the backside of the godown and climbed on the top of the union office block and from there they claimed to the ventilator and after getting upon the ventilator and coming down over the adjacent wheat stock. The theft was committed through the ventilator by dividing the contents of the bags in a small portion and passing the same through the ventilator to the other man standing on the roof of the newly constructed room and passing them to the other man. They brought the bags to the floor and passed them out of the compound.

These 22 watchmen were found negligent and were charged for lack of devotion to duty resulting loss to the Food Corporation of India. The District Manager of F.C.I. issued notice Annexure-II to all these Watchmen on 29-8-87. The watchmen denied their participation in the alleged theft. On 23-2-88 N. Sundaram imposed penalty of Rs. 957.88 of each of the 22 watchmen calculating the loss of Rs. 22.031.26. This amount of Rs. 957.88 was recovered in ten instalments i.e. nine instalments of Rs. 100 per month and the 10th instalment of Rs. 57.88. The union in their claim has represented that the 22 Watchmen are not guilty and the amount recovered from them be refunded to them.

The management contested the case on the ground that the Joint Manager Vigilence conducted preliminary enquiry. The theft was committed for about 30 days at the rate of 3-4 bags per day. Report was also lodged by the F.C.I. at Police Station. The police report clarified that there was no collusion/connivence of F.C.I. Officials with the culprits in committing the theft. Police sumitted charge-sheet against the person from whom they recovered the stolen food grains. The police did not submit chargesheet against any of these Watchmen mentioned in the claim. The case against the thieves is still pending before the Judicial Magistrate. The report of the theft was lodged on 6-10-86 at Sitabuldi Police Station, Nagpur by Godown Incharge K.N. Naijkoti. The management further claimed that these workmen were not vigilant in their duty due to which the theft was committed.

From the side of the workmen N. S. Shukla, union representative filed his affidavit. The management representative Ganesh D. Wankhede cross examine him on 29-1-02. From the side of management affidavit of Jacob Mathew was filed but he did not turn up for cross examination. It was represented by the management that he has retired from service on 31-5-02. This witness therefore did not turn up for cross examination.

Both the parties have submitted documentary evidence and have also filed their Written Arguments.

I have considered the entire oral and documentary evidence on record and the arguments submitted by the parties.

In the Statement of Claim in Para-6, it is mentioned by N. S. Shukla, Secretary, F.C.I. Employees association, Nagpur as under :

That regulation 60 of staff regulations deal with procedure for imposing minor penalties. The said regulation 60 is reproduced below :

"60-Procedure for imposing minor penalties :

(1) Subject to the provisions of sub-regulation (3) of Regulation 59, no order imposing on an employee any of the penalties specified in clauses (I) to (IV) of regulation 54 shall be made except after :—

(a) informing the employee in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an enquiry in the manner laid down in sub-regulations (3) to (23) of regulation 58, in every case in which the disciplinary authority is of the opinion that such enquiry is necessary;

(c) taking the representation, if any, submitted by the employee under clause (a) and the record of enquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour."

In para-7 of the Claim it is mentioned :—

"The applicants submit that as per Regulation 54, the Food Corporation of India is entitled to impose minor penalties as well as major penalties. Minor penalties include No.(1) censure, (2) withholding of promotion, (3) recovery of any pecuniary loss caused to the Corporation, and (4) withholding of increment of pay. Thus, under regulations 60 the Respondent Corporation is entitled to impose any of the above minor penalties. It will be in the fitness to mention here that the management is not entitled to impose two penalties from any of the groups at the same time assuming a misconduct is committed for the same misconduct. It is submitted that in the memorandum the applicants were charged for violation of the provisions of regulations 31 and 32. Regulation 31 speaks about maintaining absolute integrity and devotion to duty. Regulation 32 requires every employee to serve the Corporation honestly and faithfully and to endeavour his utmost to promote the interest of the Corporation. It is respectfully submitted that the applicants maintained abhsolute integrity and devotion towards their duties. They served the Corporation honestly and faithfully. It is, therefore, respectfully submitted that they have not committed any misconduct which may be covered by Regulation 31 or 32 of the Food Corporation of India Staff Regulation, 1971.

In Para-18 the union representative has mentioned as under :—

"The applicants submit that they are also governed by the provisions of Industrial Employment Standing Orders Act and the rules framed thereunder. Schedule-I deals with model standing orders in respect of Industrial Establishments; the said Schedule is applicable to the respondent Industry. Punishments have been provided under clause 14(4)(C). Under the standing orders, no where punishment of recovery has been provided. It is, therefore, submitted that no recovery can be effected from the applicants for alleged misconduct. Effecting of recovery itself is illegal and contrary to the provisions of standing orders. The standing orders have got overriding effect and that the effect cannot be taken away by any circular.

In Para-19 of the Claim again the representative of the workmen challenged the recovery order under section 10 of the Payment of Wages Act. It is mentioned in Para-19 of the Claim is as under :—

"The applicants are also governed by the provisions of Payment of Wages Act. Section 10 of the said Act provides for deduction which are provided under the standing orders. It is, therefore, submitted that whatever is provided under standing orders—beyond that nothing can be done as per the provisions of Payment of Wages Act. Under these circumstances, it is submitted that recovery being effected from the applicants is illegal :

(i) It is therefore prayed that the reference is liable to be made in favour of the 22 workmen who are entitled to receive the amount recovered from by the impunged order of the Mgt. of FCI Nagpur;

(ii) It is further prayed that the Hon'ble Court will be pleased to grant stay for further recovery till the disposal of this reference;

(iii) The applicant also pray that the Hon'ble Tribunal will please be grant cost of this litigation and any other relief as the Hon'ble Tribunal deems fit in the circumstances of the case;

(iv) The union is filing the documents as per list and craves leave to file other documents after receipts of reply of the management;

(v) It is submitted that the employees Union is being represented by the office bearer and it can not afford to bear the fees on account of litigation and cannot engage a counsel. In view of this the management may also be prohibited from seeking the services of any advocate, during the course of proceedings."

This case was pending before C.G.I.T., Jabalpur from January, 89 and the proceedings of the case were recorded on the Ordersheet upto 9-4-96. The ordersheet of 9-4-96 shows that the case was fixed for recording the evidence of the parties. After that the Court remained vacant and the Presiding Officer, C.G.I.T., Jabalpur did not record further proceedings.

Again the case was taken up on 27-9-99.

The ordersheet dt. 27-9-99 is as under :—

"Union absent. Management by Shri Verma.

Shri Pandey undertakes to inform the union to produce evidence on the next date. Affidavits be filed in a month time.

Case fixed for 8-12-99."

It is therefore clear that the union was given sufficient time but N.S. Shukla who was representing the workmen avoided to submit the affidavits in the Court at C.G.I.T., Nagpur.

There is a judgement of Case No. IESO-3/88, Food Corporation of India Employees Association, Ajni,

Nagpur versus Food Corporation of India, Ajni, Nagpur.

This case was heard by Shri S.S. Vyavahare, Judge, 1st Labour Court of State of Maharashtra at Nagpur.

The aforesaid application under Section 13A of Industrial Employment (Standing Order) Act, 1946 was decided on 1-7-2000 by the Presiding Officer of 1st Labour Court, Nagpur.

In the aforesaid case the undernoted issues were framed :—

Issues—

(1) Was the non-applicant competent to impose penalty under service regulations.

(2) What order.

In the above case the workmens' union had challenged the recovery order of the penalty imposed from the 22 Watchmen who are party in this reference and had stated that the Food Corporation of India's management cannot punish the 22 Watchmen by deducting the amount of loss caused to the Food Corporation of India by the theft of 115 wheat bags and 14 bags of superfine rice from the godown No. 9 of Ajni Complex during the period from 6-9-86 to 6-10-86. It was also mentioned that the deduction of the salary towards fine is a foreign concept to the model standing orders under Industrial Employment (Standing Orders) Act, 1946 and therefore the State Labour Court at Nagpur can interfere with the proposed punishment under Section 13A of Industrial Employment Standing Orders Act, 1946.

Shri S.S. Vyavahare, Judge of the 1st Labour Court, Nagpur heard both the parties at length and provided them opportunity to produce evidence and argue the case.

Both the parties that the union of the workmen and the management of F.C.I. did not prefer to produce any oral evidence. They argued the case and submitted the rulings for the interpretation of relevant provisions concerning the case under IESO Act, 1947.

Shri S.S. Vyavahare, Judge, 1st Labour Court by his order dt. 1-7-2000 rejected the above application. He has mentioned in the judgement that the management of F.C.I. can deduct the loss caused to the F.C.I. from the wages of these 22 Watchmen. The action taken by the management cannot be interfered.

After the decision of this case again a case was filed by the union of these 22 workmen before the authority under Payment of Wages Act presided over by Shri M.S. Banjari. In this case PWA 43/88 Shri V.S. Dhok and others versus Food Corporation of India, F.C.I. Godown Ajni, Nagpur the workmen challenged the order of the management dt. 23-2-88 imposing the penalty of censure and all the 22 Watchmen and directing the recovery of amount of Rs. 957.88 each from all these Watchmen being proportionate amount of loss caused to the F.C.I. out of total loss of Rs. 22,031.26 sustained by the Corporation in the shortage of grains due to theft from godown No. 9 during the period 6-9-86 to 6-10-86. In this case also the undernoted issues were framed and were decided by the competent Court on 31-03-01. The issues framed in the above case are as under :—

ISSUES	FINDINGS
(1) Whether the provisions of Payment of Wages Act are applicable to the non-applicant ?	No.
(2) Whether the enquiry by this authority into the validity of deductions cannot be made as already the non-applicant had followed due procedure for deduction ?	Yes.
(3) Whether the deductions are justified ?	Yes.
(4) What order ?	As per final order.

Shri M.S. Banjari authority under the Wages Act has passed a detailed judgment containing 17 pages and has at length discussed the matter in dispute concerning the recovery of Rs. 957.88 from the wages of each of the 22 Watchmen for the loss caused to the Food Corporation of India. It is held in the last Para of the judgement :—

> "That there is evidence that the loss is caused due to theft taken place in godown No. 9 and to go guard the property of entire godown and to see that the godown is intact of seal is a duty cost on the Watchmen working in different shift and therefore the applicants (22 Watchmen of godown No. 9 of F.C.I., Ajni) cannot succeed in claiming back the amount so deducted from their wages. The finding to both the issues are therefore in affirmative. The claim of the applicant is dismissed.

From the above two judgments it is clear that the matter in issue in this reference and the matter decided by the above two Courts i.e. Presiding Officer, 1st Labour Court, Nagpur vide order dt. 1-7-2000 in Case No. IESO-3/88 and the second judgment of Shri M.S. Banjari authority under Payment of Wages Act, Case No. 43/88 decided on 31-3-2001 is the same. The union of the workmen and the workmen in the above two cases had challenged the action of the District Manager, Food Corporation of India, Nagpur regarding imposing of penalty of recovery of Rs. 957.88 from each of the 22 workmen as the amount of proportionate loss caused to the Food Corporation of India vide order dt. 23-2-88.

The above two judgments cited, clearly show that the matter in dispute between the workmen and the management of Food Corporation of India has already been decided. The orders of two above Courts i.e. 1st Labour Court of Nagpur dt. 1-7-2000 and the judgement dt. 31-3-01 of the Authority under Payment of Wages Act have become final. No order has been submitted in this Court to show that the above two orders have been challenged by the union of these 22 Watchmen in any other competent Court.

On the other hand the judgment dt. 1-7-2000 of Presiding Officer, S.S. Vyavahare of 1st Labour Court, Nagpur also shows that these workmen had filed a Writ Petition No. 438/88 before the Nagpur bench of Bombay High Court challenging the recovery of the penalty of Rs. 957.88 from the 22 Watchmen. Lateron these Watchmen had withdrawn the Writ Petition from the Hon'ble High Court. From the above documents it is clear that the union of the F.C.I. Employees Association, Nagpur has been misusing the process of the law. When they did not get any favourable order from one Court, they approached the other Court on the same issue in dispute and they wasted much time of the different Courts for getting the same issue decided by changing a few words and the sections of the various Acts.

The matter in issue in Writ Petition No. 438/88 was the same which is mentioned in the schedule of this reference.

The matter in dispute in application No. IESO-3/88 decided by 1st Labour Court, Nagpur on 1-7-2000 is the same as is mentioned in Para-18 of the Statement of Claim dt. 25-2-89 submitted before C.G.I.T. Jabalpur by N.S. Shukla, Secretary, F.C.I.E.A., Nagpur. As mentioned in Para-18 of the claim the Industrial Employment Standing Orders on which the recovery was challenged has been decided on 1-7-2000. The union of the workmen in Para-19 of the claim dt. 25-9-89 had also challenged the recovery of Rs. 957.88 from the salary of 22 Watchmen vide order dt. 23-2-88 of District Manager, Food Corporation of India. Thus the provisions of Section 10 of the Payment of Wages Act were challenged before the Authority under Payment of Wages Act, Nagpur in Case No. PWA-43/88 decided on 31-3-2001.

While producing evidence in this Court the union of the workmen and the management of workmen concealed the fact before this Court that the dispute in question has already been decided by the two competent Courts referred above. In these above circumstances the parties have no right to raise the same issue, which has already been decided before this Tribunal. It was the duty of the union and the management to withdraw this reference as the matter in dispute has already been decided by the above two Courts and was not pressed in the Writ Jurisdiction before the Bombay High Court in the Writ Petition No. 438/88.

The above reference is therefore barred under Section-11 of Civil Procedure Code by the principle of res-judicata. Section 11 CPC is as under :—

> "No Court shall try any suit or issue in which the matter directly and substantially in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

As the matter in issue mentioned in this schedule regarding the imposing of penalty of recovery of Rs. 957.88 from each of the 22 Watchmen vide order dt. 23-2-88 has already been decided, no further orders are required in this case. The workmen are not entitled to any relief claimed by them in this reference.

Shri N.S. Shukla, the Secretary of the union has submitted application on 10-12-02 that out of the 22 workmen who had contested the case, only 6 (six) of them are in service. Their names are as under :—

(1)	Shri R.B. Chikane	Sr. W/man
(2)	Shri D.A. Hajare	-do-
(3)	Shri S.B. Wayal	D/Oper.
(4)	Shri A.R. Band	Sr.W/man
(5)	Shri K.S. Dhone	D/Oper.
(6)	Shri A.R. Jaiwant	-do-

The undernoted 9 (nine) workmen have died :—

(1) Shri G.M. Lunge
(2) Shri K.D. Karadbhajane
(3) Shri T.D. Uyavhare
(4) Shri S.B. Sirsat
(5) Shri K.G. Shende
(6) Shri N.G. Rangari
(7) Shri J.R. Wankhede
(8) Shri D.K. Ramteke
(9) Shri S.S. Mohture

The undernoted 7 (seven) workmen have retired from service :—

(1) Shri V.R. Sawarkar
(2) Shri Maniram Thapa
(3) Shri S.B. Ingole
(4) Shri V.S. Dhok

(5) Shri K.P. Wankhede

(6) Shri H.M. Smith

(7) Shri R.N. Pawar.

Thus only 6(six) workmen are at present in service of the F.C.I.

ORDER

The action of the District Manager, Food Corporation of India, Nagpur is justified in imposing the penalty of recovery of Rs. 957.88 from each of the 22 Watchmen mentioned in the schedule vide order of the management dt. 23-2-88.

The workmen are not entitled to any relief claimed by them.

Date : 11-12-2002

B.G. SAXENA, Presiding Officer

नई दिल्ली, 6 जनवरी, 2003

का. आ. 389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 26/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/01/2003 को प्राप्त हुआ था।

[सं. एल-12025/1/2003-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 6th January, 2003

S.O. 389.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 06-01-2003.

[No. L-12025/1/2003-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

PRESENT :

Shri E. ISMAIL, Presiding Officer

Dated the 30th day November, 2002

INDUSTRIAL DISPUTE L.C.I.D.NO. 26/2001

BETWEEN

Sri B. Bhaskar,
H.No. 2-2-185/22/2,
Ramakrishna Nagar, Bagh Amberpet,
Hyderabad-13 ..... Petitioner

AND

1. The Zonal Manager (Personal),
Central Bank of India,
Central Bank Building,
Bank Street, Koti, Hyderabad.

2. The Regional Manager,
Central Bank of India,
Central Bank Building,
Bank Street, Koti, Hyderabad. ....: Respondents

APPEARANCES :

For the Petitioner : M/s. Karna Venkateswara Rao & P. Saraswathi, Advocates

For the Respondent : M/s. P. Muralidhar, R. Manjula & P. Ramulu, Advocates

AWARD

This is a case taken under Sec. 2 A (2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 beween Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The brief facts of the petition are :That the Petitioner was appointed as a temporary sub-staff on temporary basis in the Respondent bank during the year 1984-85 for more than 100 days as per the service certificate issued by the Respondent date 20-12-95. Further at the time of his appointment he studied upto 9th class and as such he is eligible to hold the post of sub-staff. That the Petitioner had been paid salary as per the scale attached to that post on permanent basis. The petitioner has been discharging duties to the complete satisfaction of the respondents herein and without any blame. That after completion of 100 days the Petitioner has been retrenched from service in order to appoint their men of their choice. That the Respondent without any reasons retrenched the Petitioner even though there are so many temporary employees worked subsequent to the Petitioner. That the Government of India Ministry of Finance, Department of Economic Affairs (Banking Division) issued proceeding dated 16-8-90 wherein the public sector banks are directed to utilize the services of existing panel of temporary employees until the problem of existing temporary employees is resolved no bank will be permitted to take any further temporary appointments. Those employees

who had put in 90 or more days after cut of date that is 1-1-1982 will be eligible for consideration under the above proceedings. As per the above proceedings the Petitioner has completed more than 90 days in between 1-1-1982 and 24-12-1990 and thus he fulfilled the condition for absorption as sub-staff. And as such vide proceedings dated 21-3-93 the Petitioner was directed to appear for written test at their staff office Central Bank of India, Bank Street, Koti, Hyderabad. As such the Petitioner appeared for test fulfilling all the conditions memtioned in the call letter. It is submitted for reasons best known to the Respondent the fate of the examination has not seen the light of the day. That with alterior motive the Respondent kept this issue in dark to achieve their goal in appointing their men in the vacancies. The acts of the Respondents in appointing their men under pick and choose method is not permissible under law and violate the principles of Article 14 of Constitution of India. Further submitted that as per Sec. 25H of the I.D. Act the person who is retrenched from service shall be given a prior opportunity for re-employment and the retrenched workmen shall have preference over other persons basing on their seniority. They employed their own man. Hence, the Respondent may be directed to re-employ the Petitioner as sub-staff and direct Respondents to put him in seniority above his juniors in the interest of justice.

3. A counter was filed on behalf of the Respondent one and two that it is false to state that the Petitioner was retrenched from service to appoint persons of the Respondents choice. The averments regarding proceedings of the Ministry of Finance, Department of Economic Affairs (Banking Division) dated 16-8-90 are subjected to proof and relevance. The averments as to the written test on 25-10-93 and the Petitioner appearing in the said test is correct. That the results of the said test were not announced due to ban in the recruitment by the Reserve Bank of India and Government of India in the Respondent bank. That the bank is still continuing. That the Petitioner can not claim a job as a matter of right on the ground of appearing for the written test. That the petition may be dismissed. Further it is barred by limitation.

4. The Petitioner examined himself as WW1 and deposed that he joined in the year 1984-85 as sub-staff on temporary basis in the Respondent bank and worked for more than 100 days. That he was paid the scale attached to the post on permanent basis. He worked for more than 100 days. He alone was removed while others were continuing. That the call letter for written test is Ex. W1. Ex.W2 is the certificate issued by the bank that he worked for more than 100 days on casual and termporary basis. Ex. W3 is the letter given by him to the Respondent. Ex. W4 is a Judgement in writ appeal No. 270/1982 of the A. P. High Court wherein their Lordships held that Sec. 25H of the I.D. Act prevails over the provisions of the Employment Exchange Act. Ex. W5 is a covering letter and circular issued by Government of India dated 6/7-6-90. Another circular dated 10-8-90 is Ex. W6. Ex. W7 is the minutes of the meeting wherein it is held that the requirement of employment exchange proceedings is examined for temporary staff.

5. In the cross examination he deposed that his father retired as an employee of the Central Bank of India. That he can not give the dates but he worked in March, April, May and June, of 1984 for more than 100 days. That is his father retired in 1995, he was working in the same branch in which Petitioner worked on temporary basis. Except the representation dated 11-10-93 he has not given any representation as to the reappointment.

6. The Respondent examined Sri N. Ramgopal, Assistant Manager as MW1. He deposed that the Petitioner WW1 worked at Hyderabad branch during 1984-85 for about 90 days in the leave vacancy of sub-staff whenever required. He appeared for a written test but results are not yet announced due to ban imposed by Government of India except reserved categories. And the bank is continuing. Sri Narsinga Rao, was appointed as he is SC for clearing SC-ST backlog vacancies in sub-staff cadre. The remaining nine candidate appointed as part time karmacharis. These persons worked on temporary basis for 240 days in a calendar year. As such they were appointed as PTS on permanent basis. In the cross examination he deposed that all the cadres as attender, peons, sweepers all come in one category that is sub-staff. It is true that if any recruitment/re-employment is made either casual or termporary preference must be given to the employees who worked already in re-employment. It is correct that the Petitioner was not called for employment. That no documentary proof is filed before the Court that the Government has imposed ban on retrenched employees for re-employment.

7. Sri B. Beerappa, father of WW1 was examined as WW2 and deposed that during 1984 and 1985 his son WW1 worked as sub-staff. Ex. W4 is the list prepared by him showing the persons appointed at various branches after December, 1993 who had not worked previously. In the cross examination he deposed that the results of the written examination are not yet announced.

8. It is argued by the Learned Counsel for the petitioner that the petitioner was appointed as sub-staff in the Respondent bank during the year 1984-85 on temporary basis .That the Government of India issued proceedings on 16-8-90 that the public sector banks are directed to utilize the services of termporary employees by absorbing them on permanent basis that the temporary employees who have put in a minimum of service of 90 days or more are eligible for appointment as such Respondents conducted a written test and Petitioner is also one of them. That the

results are not declared so far and the petitioners are kept in dark. That MW1 himself admitted that all the attenders, peons, sweepers and part-time sweepers are all under sub-staff category and thus this Petitioner also came under sub-staff category. And bank cannot deprive the Petitioner who has got right for any employment after retrenchment before appointing any new persons in the Respondent bank. The Hon'ble High Court of A.P. vide Judgement dated 25-8-87 in writ appeal No. 270/82 held that the rights conferred under Sec. 25H of the I.D. Act is available to all retrenched employees previously over the provisions of the employment exchange. Thus, the Petitioner is entitled for employment.

9. It is argued by the Learned Counsel for the Respondent that it is not denied that the Petitioner worked during 1984-85 as per Ex. W2 certificate. It is also not denied that Ex. W1 call letter was issued for written examination and results are not announced due to ban on recruitment by Reserve Bank of India and Government of India. That the Petitioner was actually working as a Safai Karmachari part-time worker in the bank and in the leave vacancy he was taken. He cannot claim as a right and what was he doing from 1984 till he approached the Court in 2001. That is after a lapse of 16 years. Hence, he is not entitled for any relief.

10. It may be seen that Ex. W2 is a certificate issued by bank stating that Sri Bhaskar the Petitioner herein has worked at Hyderabad branch for more than 100 days on casual and temporary basis in leave vacancy of permanent subordinate staff. Nowhere it is said that he worked as a Safai Karmachari. Even MW1 has not stated so. Even he also stated that he worked as sub-staff. It is rather surprising that the examination although conducted in the year 1993 except stating that there is a ban there is no documentary evidence to that effect. However, it created hopes in the minds of several persons whether they would be selected or not but it created hopes and already nine years lapsed. Be that may be so. But the Petitioner also from 1985 till he was called for written examination during 1993 has not approached the bank. Nor after written test till 2001 he approached the bank. Obviously the case is quite a belated one. But, however taking into consideration that the Petitioner worked for about 100 days as per the certificate given by the Respondent Ex. W2 it was in the fairness of the things that in future vacancies also he should have been called for any termporary post. No doubt he sat for the examination for the selection as a peon in the bank but it has not come clearly in the evidence as to what post he worked whether as Safai Karmachari or as peon. So I think it is in the fairness of the things that the Petitioner should be appointed temporarily in any temporary vacancy that arises with the Respondent taking his seniority as 1984-85 of sub-staff because Ex. W2 states that he was appointed on casual and temporary basis in leave vacancy of permanent subordinate staff.

Award passed. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me in the Open Court on this the 30th day of November, 2002.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner :	Witnesses examined for the Respondent :
WW1 : Sri B. Bhaskar	MW1 : Sri N. Ramgopal
WW2 : Sri B. Beerappa	

Documents marked for the Petitioner

Ex. W1 : Copy of lr. No. HRO : PRS : 93-91: 1856 dt. 21-10-93.

Ex. W2 : Copy of Certifidcate dt. 20-12-1985.

Ex. W3 : Copy of representation of WW1 dt. 11-10-93.

Ex. W4 : List of persons appointed after Dec. 1993 prepared by WW2.

Documents marked for the Respondent

NIL

नई दिल्ली, 6 जनवरी, 2003

का. आ. 390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 27/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/1/2003 को प्राप्त हुआ था।

[सं. एल-12011/72/99-आई. आर. (बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 6th January, 2003

S.O. 390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 6/1/2003.

[No. L-12011/72/99-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, AT KOLKATA

Reference No. : 27/1999

PARTIES :

Employers in relation to the management of Central Bank of India

AND

Their workmen.

PRESENT :

Mr. Justice Bharat Prasad Sharma ...Presiding Officer

Appearance:

On behalf of Management — Mr. S. K. Chatterjee, an Officer of the Bank.

On behalf of Workmen — Mr. D. K. Chatterjee, General Secretary of the Union

State : West Bengal. Industry: Banking.

Dated : 26th December, 2002

AWARD

By Order No. L-12011/72/99/IR(B-II) dt. 16-08-99 the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following Dispute to this Tribunal for adjudication :

"Whether the management of Central Bank of India is justified in imposing the penalty of stoppage of one increment upon Sh. A. K. Chowdhary, Sub-staff is legal and justified? If not, what relief is the workman concerned entitled to?"

2. The present reference relates to imposition of punishment of stoppage of one increment of one Amal Kumar Chowdhary a Sub-staff in the Central Bank of India. The dispute was raised by the Central Bank of India Staff Congress.

3. From the written statement of the union it appears that the said workman, Amal Kumar Chowdhary who happened to be a Sub-staff of the Bank was issued a memo on 9th April, 1996 calling upon him to explain his failure to do the job assigned to him on 24-01-1996 and for handing over the return cheque of Rs.25000/- to one N. B. Gurung without any office instruction. The workman submitted his reply on 02-05-1996 in which he stated that on 24-01-1996 he had gone to Non-Business Office (N.B.O.), Calcutta and had brought clearing cheques, but he was not handedover any cheque by the Clearing Officer, Shri Amar Nath Chakraborty. He further stated that he left the office as he was feeling feverish and he also remained absent on 27-01-1996 to 29-01-1996. Subsequently, his leave was also granted by the management. A similar memo was issued to Nar Bahadur Gurung, Armed Guard of the Bank on 09-02-1996 and he also submitted his reply to the memo on 12-02-1996 in which he stated that the cheques worth Rs. 25000/- and Rs. 60000/- were handedover to him on 27-01-1996 at 12.15 P.M. by the concerned department of the Bank for counter return to State Bank of India, Bikash Bhawan. After receiving the reply of the workman concerned, the Regional Manager issued a chargesheet against the workman concerned on 7th June, 1996. Subsequently, the then Regional Manager was transferred and the incumbent who joined in his place also accepted the chargesheet by his order dated 10-7-96 as disciplinary authority. One S. C. Saha was appointed as Enquiry Officer in the case. He happened to be a Manager, CMD, Regional Office, North Calcutta. The Enquiry Officer submitted a report on 7-7-97 to the disciplinary authority in which he clearly stated that after carefully going through the evidence produced, he did not find that the workman had committed any mistake for which he had been charged. For arriving at the conclusion regarding the chargesheet the Enquiry Officer sub-divided the charge into 4 sub-heads and discussed the materials on record in detail and then he came to the conclusion that whatever had happened was because of the faulty practice being followed by the Bank in contravention of the rules and manuals of the Bank. In his report he clearly stated that while the Clearing Dept. Incharge, Shri Amar Nath Chakraborty was present, the matter could not be taken up by the Branch for contacting the S.B.I., Bikash Bhawan in the morning of 27-1-96. The Enquiry Officer also stated that the workman had not committed any mistake in making the entries regarding the cheque in the cheque Register in place of the incharge of the Dept., Shri Amar Nath Chakraborty as it was the prevailing practice in the Branch. It is also stated that the defence representative during the enquiry also clearly stated in his written submission that the chargesheet issued to C.S.E. was baseless, fabricated and malafide. He had stated in his finding that defence witness, N. B. Gurung, Armed Guard has clearly replied against the question put to him as DW-3 that on 27-1-96 at about 12.15 P.M. Clearing Dept. Incharge had handedover two cheques to him worth Rs. 25000/- and Rs. 60000/- respectively and he had taken the same to the counter of S.B.I. Bikash Bhawan. The said witness had also stated that the cheques were handedover to him by Shri A. N. Chakraborty on 27-1-96 and it was never handover to him by the workman, Amal Kumar Chowdhary. It is also stated that after receiving the reply from N. B. Gurung to this effect the management did not take any action against him. It is also stated that a sub-staff of the Bank, namely, Nil Kanta Ghosh also replied against the question put to him at the time of enquiry that the cheque worth Rs. 60000/- was not handed over to him by the Departmental incharge, but Rs. 15/- was paid to

Gurung as Accountant's order as conveyance expenses of counter return on 27-1-96. It is also stated that the Presenting Officer had also stated before the Enquiry Officer that the entire incident had happened only due to negligence and carelessness, but the disciplinary authority proposed punishment to the workman concerned and subsequently also confirmed it by differing with the opinion expressed by the Enquiry Officer. It was done by an order dated 31st July, 1997. It is further stated that the chargesheeted employee in his submission dated 18-8-97 addressed to the disciplinary authority appealed to withdraw the charge levelled against him, but it could not be done. The workman had also urged that under 521/87 of Sastri Award and Clause 19.10 of the bipartite settlement a speaking order was required in the matter. In this connection, it is stated that in several decisions it has been held by their Lordships of the Hon'ble Supreme Court that in such matters speaking order has to be passed, but without passing any speaking order, only differing from the findings of the Enquiry Officer, the disciplinary authority declared the workman guilty and imposed punishment on him. It has also been stated that when an appeal was filed before the appellate authority, he also without passing any speaking order, only concurred with the decision of the disciplinary authority and dismissed the appeal. Thereafter, the union raised the dispute and it was ultimately taken-up in conciliation proceeding and when the conciliation proceeding could not materialise, the failure report was submitted to the appropriate Government and the present reference was made.

4. In the written statement filed on behalf of the management, the management has tried to challenge the maintainability of the reference by saying that whatever order has been passed, is administrative in nature and there was no industrial dispute raised in the matter and without application of mind, the reference has been made. But, in this connection, it will suffice to say that the matter related to imposing punishment on a workman by the management and the dispute was raised by the union and after receiving the failure report from the Conciliation Officer the appropriate Government has made the reference and the question of challenging the maintainability of the reference does not arise. So far as the allegations made in the written statement of the union are concerned, the management has denied all the allegations. It has been stated that there is no rule that the disciplinary authority cannot disagree with the findings of the Enquiry Officer in a departmental enquiry. It has been further stated that the allegations made in the written statement should be proved by the union and the union is put to strict proof of it. It has been further stated that according to rules the disciplinary authority in a departmental enquiry may not agreed with the findings of the Enquiry Officer and he may pass a speaking order and in this case the speaking order has been passed and the reasons have been assigned by the disciplinary authority for arriving at the conclusion regarding the guilt of the workman. It has been stated that actually on 24-1-96 the cheque worth Rs. 25000/- was handedover to the workman concerned and instead of taking it to the counter of the S.B.I. Bikash Bhawan, the workman handedover the said cheque to Nar Bahadur Gurung a Security Guard of the Bank and went away and he remained absent for several days subsequently. The said Nar Bahadur Gurung also did not take the cheque to the counter of S.B.I. and he went away to attend a function and subsequently after the Bank reopened on 27-1-96, 25th and 26th being the holidays, he disclosed that the cheque was lying with him and then the cheque was sent to the counter of S.B.I., Bikash Bhawan, but this cheque was returned and was not accepted on the ground that it was not produced before them in time. It is stated that on account of this negligence on the part of the workman concerned the Bank sufferred a loss of Rs. 25000/- and the workman failed to discharge his duty and was negligent and his negligence amounts to serious misconduct which has also loss of the Bank. Therefore, according to the management the workman had been rightly held guilty and punished by the disciplinary authority and the appellate authority also considered his appeal and his appeal did not find favour with the appellate authority and accordingly the same was dismissed. In this view of the matter, it has been stated on behalf of the management that the workman is not entitled to any relief what-so-ever and the reference is fit to be disposed of accordingly.

5. Both the parties adduced evidence in support of their respective cases. So far as the union is concerned, it has examined the workman concerned, Amal Kumar Chowdhary as WW-1. he stated that he had joined the Bank on 08-07-87 as a subordinate staff and he was working at Salt Lake Branch of the Bank at the relevant time and he is still working there. According to him a letter was issued to him by the Branch Manager, which is Ext. W-1. It was issued on 01-02-1996 and it was stated that on 24-01-1996 the Branch had handedover a cheque worth Rs. 25000/- to him. He has stated that on 24-01-1996 altogether 80 cheques were given to him and he had sent all the cheques to the Main Office of the Bank for which he was paid conveyance allowance also. However, he stated that no cheque was handedover to him on that date for counter return. He further stated that one cheque purported to have been issued by the State Bank of India on behalf of a party was received in the Branch Office that date, but it was not handedover to him. So, in reply to the aforesaid memo. Ext. W-1 he gave a reply on 02-02-1996 vide Ext. W-2. Thereafter, according to him, he received another memo on 23-04-1996 which was dated 09-04-1996. This memo is Ext. W-1/1. He further stated that he replied to this memo also by his letter dated 02-05-1996. This reply is Ext. W-2/1. He further stated that he was on leave on 27-01-1996 and 29-01-1996 and his leave was also granted by the management after he had submitted

leave application with the medical certificate that he was ill. According to him, he had filed this application on 30-01-1996. This application is Ext. W-3. He further stated that a chargesheet was issued against him on 07-06-1996, copy of the chargesheet is Ext. W-4. He further stated that an enquiry was started on 05-09-1996 which was completed on 28-02-1997. He further stated that the Enquiry Officer, Mr. Subodh Chandra Saha who happened to be a Manager of the bank posted at North Regional Office held the enquiry and the management was represented by one Asit Das then posted at Shyambazar Branch. He further stated that Armed Guard, Nar Bahadur Gurung was produced by him before the Enquiry Officer during the enquiry and the Enquiry Officer submitted his report, the copy of which is Ext. W-5. The witness further stated that the management passed an order holding him guilty of the charge after the report of the Enquiry Officer and subsequently awarded punishment to him. The order is Ext. W-6. According to him, by way of punishment his one increment was ordered to be stopped. Then he filed a representation before the disciplinary authority on 22-09-1997, but it was not considered. This representation is Ext. W-7. The appeal was also preferred by him before the Assistant General Manager, but the appeal was also turned down by order dated 18-02-1998, marked Ext. W-10. Ext. W-9 is the appeal of the workman. The witness further stated that at the relevant time the officer of the Clearing Dept. was Mr. Amar Nath Chakraborty. According to him the cheque worth Rs. 25000/- on return was received by the said Amar Nath Chakraborty. He also further stated that from the entry dated 27-01-1996 it appears that another cheque worth Rs. 60000/- was also received which was issued by S.B.I. in favour of one P. Sanky. He also further stated that in the column meant for the person receiving the cheque, the signature of Amar Nath Chakraborty is available. He also stated that the aforesaid two cheques were handedover to another employee for counter return. This another employee, according to him was Nar Bahadur Gurung to whom the conveyance allowance was paid. The witness further stated that out of Rs. 25000/- of the cheque concerned, the party had returned Rs. 5000/- to the State Bank. In his cross-examination, he stated that to his knowledge no cheque from the Clearing Dept. was returned on 24-01-1996. He further stated that there were altogether 4/5 substaff at the relevant time. He further stated that when a cheque is returned from the clearing, the sub-staff takes it to the counter concerned. He has also admitted that the entry in the register dated 24-01-1996 is in his pen. This entry is marked Ext. M-1. He stated that the cheque was received from the S.B.I., Bikash Bhawan and the entries in the register have been made by himself and also by some other substaff. He, however, stated that Amar Nath Chakraborty knows writing and reading and he writes also, but in this case, he asked the workman to make the entries and he had made it accordingly. He stated that the other entries in the page have been made by some other substaff. According to him, there were altogether 6 substaff in the branch and 4 of them were working in the Clearing Dept. and there is one clerk also in the Dept. He has further stated that inspite of the presence of the clerk in the Clearing Dept., the substaff used to make entries in the register. He has denied the suggestion that the entry was made hurriedly in order to suppress his mistake. He has further denied that Amar Nath Chakraborty had given the cheque worth Rs. 25000/- to him for taking it to the clearing. He stated that when the cheque is received in return by substaff, no receipt is taken.

WW-2 is Nar Bhadur Gurung who happend to be an Armed Guard in the Salt Lake Branch of the Bank. He stated that he is posted since 31st. December, 1979. He also stated that the workman concerned, Amal Chowdhury also works in the Branch who happens to be a Peon of the Bank. He stated that he was not given any cheque to Amal Chowdhary and he had submitted a reply to the management by his letter, Ext. W-12. He further stated that he was handedover a cheque worth Rs. 25000/- and another cheque worth Rs. 60000/- by the Clearing Officer Incharge, Mr. Amar Nath Chakraborty on 27th January, 1996 at 12.15 P.M. According to him, the cheques were required to be handedover to S.B.I., Bikash Bhawan. He further stated that the S.B.I. had retained the cheque worth Rs. 60000/-, but had returned the cheque worth Rs. 25000/- which he had handedover to the Branch. The witness has further stated that it was no part of his duty to take cheques for clearance, but as it was asked by the Branch Manager, he had done so. He also further stated that he used to received conveyance allowance for this purpose, but the voucher of conveyance allowance was not prepared in his name; rather, it used to be prepared in the names of different Peons of the Branch. In his cross-examination also he has stated that when the cheques were handedover to him, he had left the Bank, though he was supposed to be present there, but he left with the cheques as directed. He has denied the suggestion that actually on 24-01-1996 Amal Chowdhary had given the cheque worth Rs. 25000/- to him to return the same to the counter of S.B.I., Bikash Bhawan. He admitted that Amal Chowdhury was present in the Branch on that date. He has also denied that on 27-01-1996 one Nilkanta Ghosh had given a cheque worth Rs. 60000/- to him for return to S.B.I., Bikash Bhawan. He denied the suggestion that the cheque worth Rs. 25000/- was ever handedover to the Manager by him.

WW-3, Nilkanta Ghosh is another substaff of the Bank who used to work in the Clearing Dept. at the relevant time. He knew the workman concerned, Amal Chowdhary who also happened to be his co-worker as substaff. He stated that on 24-01-1996 no cheque worth Rs. 25000/- was handedover to Amal Chowdhury; rather, the cheque was handedover to N.B. Gurung on 27-01-1996. He also further state that for clearing cheques the management had paid expenditure in favour of this witness on 30-01-1996. He

received Rs. 40/- and paid Rs. 15/- to Shri Gurung on this account from this amount. According to him, the voucher was prepared in his favour because Shri Gurung happened to be an Armed Guard. He has also stated that Amal Chowdhary was on leave from 27-01-1996 for which leave was granted to him on 30-01-1996. He has stated in his cross examination that he had received a bunch of cheques on 24-01-1996 in the second hour and he had left the branch and, therefore, he cannot say whether any cheque was handedover to the workman concerned in the second hour.

6. Four witnesses have also been examined on behalf of the management. MW-1, Swapan Kumar Ganguly has stated that at the relevant time, i.e., on 24-01-1996 he was working as Branch Manager of the Salt Lake Branch and on that date Amal Chowdhury was working in the Clearing Dept. as Sub-staff. He has stated that the inward Clearing Peon was supposed to lodge counter return of the cheques as it was the duty of a substaff and for this purpose conveyance allowance used to be paid to the Peon concerned. He has further stated that it is the duty of the Clerk attached to the Clearing Dept. to note down the particulars of the counter return cheques and it is not the duty of the sub-staff to make such entries. He has also stated that the workman concerned had brought the usual cheques from the Calcutta Non-business Office. According to him, it was the duty of Amal Kumar Chowdhury to lodge the counter return cheques on that date and the witness came to know on 29-01-1996 that there was a complaint about the cheque worth Rs. 25000/- not being taken to the counter of S.B.I., Bikash Bhawan. Thereafter, he reported the matter to the higher authority in the Regional Office, Calcutta. He refers to his letter, Ext. M-2. The witness has further stated that he learnt that Amal Chowdhury had not lodged the said cheque on 24-01-1996, which he was supposed to do and he also further stated that because of this negligence on the part of Amal Chowdhury, the Bank had to pay Rs. 25000/- to the S.B.I. for overdrawing the account. He also proved a statement of account, Ext. M-3. In his cross-examination, however, the witness has stated that so far as the making of entry in the register regarding the outgoing cheques are concerned, it is the duty of the Clerk concerned, but he cannot say as to who made the entries. He also further stated that the entry dated 24-01-1996 regarding the relevant cheque appears to be made in the pen of Amal Chowdhury the workman concerned and it is under the initial of Amar Nath Chakraborty the then Assistant Manager. He has stated in his cross-examination that he was also called as a witness for the management during the departmental enquiry, but he was not produced by the management. He has also admitted that as per the report he said that the counter return cheque was given to Amal Chowdhury on 24-01-1996 for clearing. He admitted that in case of necessity other substaff is also deputed for the purpose of clearing cheques and he also admitted that at their instance some amount was also deposited by the payee.

MW-2, Amar Nath Chakraborty is the person who was incharge of clearing in the Branch at the relevant time. He stated that on 24th January, 1996 a cheque worth Rs. 25000/- was returned which related to Savings Account of one Pradip Sanky. He further stated that it was to be returned to S.B.I., Bikash Bhawan. The cheque is marked Ext. M-4. He stated that it was the duty of the Clearing Peon to take the cheque and the Peon concerned was Amal Chowdhury. He also further stated that he had given it to Amal Chowdhury, the workman to take it to Bikash Bhawan Branch of S.B.I. at 2.45 P.M. on that date. He also further stated that the Peon had not signed in token of receipt of the cheque as it was not the practice. He also further stated that a register was maintained for outer clearing cheques, but sometimes the Peon also used to fill it by themselves and then to produce before him for checking. He further stated that Amal Chowdhury had filled-up the details regarding this cheque on that date and the xerox copy of the extracts have been produced, which is marked Ext. M-5. He further stated that Amal Chowdhury had not claimed any conveyance charge in this regard as the cheque was not served and delivered by him. He further stated that 25th and 26th January were holidays and on 27th Amal Chowdhury was absent and 28th was Sunday. According to him on 29th also he was not present and on that date he found that Armed Guard, Nar Bahadur Gurung put the cheque on the table of Accountant, Smt. Manisha Sikdar and he felt surprised at it. He has stated that the Armed Guard is supposed to be in the Bank on duty. He further stated that thereafter he went to Bikash Bhawan Branch of S.B.I. and learnt that on 27th January the cheque was taken to the Branch after working hours and it was returned. He further stated that thereafter he reported the fact verbally to the Branch Manager and on 30th January he gave a report in writing, which is Ext. M-7. In his cross-examination, he has stated that when the cheque was handedover to the Peon, the Clearing Clerk was present in the Bank. According to him, this clearing Clerk was one Sahasranshu Chowdhury. The witness further stated that the entries in the register are made by the Clerk as well as the Peons according to his knowledge, but the Peon does not sign the entries and it is signed by this witness. He further stated that a departmental enquiry was held in this case. The Enquiry Officer had submitted a report. He also admitted that in his report the Enquiry Officer stated that the Peon was not guilty. He further admitted that the Bank had issued a memo to Nar Bahadur Gurung and he had also filed a reply, but he does not know what happened in the matter.

MW-3, Sahasranshu Chowdhury happened to be the clerical staff of the Salt Lake Branch of the Bank at the relevant time. According to him on 24-01-1996 he was working in the Clearing Dept. and on that date one cheque was returned which was for Rs. 25000/-. It related to Account No. 4682 standing in the name of one Pradip Sanky. It was

returned from Central Bank of India to State Bank of India. Bikash Bhawan Branch. He refers to the cheque, Ext. M-4. He further stated that the cheque was handedover to Amal Chowdhury who was a Peon in the Clearing Dept. at that time. He said that it was handedover to him at 2.45 P.M. on 24-01-1996 by the then incharge of the Clearing Dept., Amar Nath Chakraborty. He also further stated that since there was no practice, on receiving the cheque signature of the recipient, Amal Chowdhury was not taken. He also stated that the particulars of the cheque was not entered in the Outward Clearing Register by Amal Chowdhury, he refers to Ext. M-5. He further stated that he cannot say whether Amal Chowdhury had delivered the cheque in the State Bank of India and subsequently, Nar Bahadur Gurung reported that the cheque was not received on return. He also stated that the incharge of the Clearing Dept. Mr. Chakraborty had reported the matter to the Branch Manager. In his cross-examination, he admitted that duty of filling up the Outward Clearing Register was his, but as he was not free and was very busy in clearing matter, he did not make the entry in the register on that date. He also admitted that he had deposed before the Enquiry Officer, but he does not remember whether he has stated in the enquiry that the practice was that the Peon used to make entries in the Outward Clearing Register. He has added that actually when the Clerks remain busy, the Peons makes the entry. However, the initial is put by the incharge. The witness has further stated that on the relevant date he was a temporary clerk of the Clearing Dept. in the absence of the permanent incumbent. However, he does not remember as to who was the permanent incumbent. When the register was shown to him, the witness was unable to say whether there was any entry in the peon of the Clerk of the Clearing Dept. He also said that entry dated 18th January, 1996 in the register was also in the peon of Amal Chowdhury. He has also admitted that he cannot say as to who had actually gone to State Bank of India to deliver the return cheque.

MW-4, Mrs. Manisha Sikdar happened to be a Branch Manager of Paikpara Branch of the Central Bank of India and according to her in January, 1996 she was working as an Accountant in the Salt Lake Branch. She has stated that a letter dated 29-1-1996 was written by her and she proved this letter, Ext. M-9 she stated that the letter was addressed to the Branch Manager and it was in the circumstance that on 29th January when she came to the office the Security Guard, Nar Bahadur Gurung met her and handedover a cheque worth Rs. 25000/- relating to one Pradip Sanky's Account. She also stated that the Armed Guard told her that on 24th January the cheque was handedover to him by Amal Kumar Chowdhury, substaff in order to return the cheque to S.B.I., Bikash Bhawan. She also stated that Gurung told her that on 24th he had to attend a marriage ceremony and so he kept the cheque in his bag and it remained in the bag. According to her, Gurung also told her that on 27-1-1996 he was also handedover another cheque worth Rs. 60,000/- by another substaff, Nilkanta Ghosh for counter returning it to S.B.I., Bikash Bhawan and accordingly he had taken both the cheques to Bikash Bhawan on 27th January, but whereas the cheque worth Rs. 60,000/- was accepted, the cheque worth Rs. 25,000/- was not accepted on the ground that the date had expired. She further stated that then she wrote a letter to the S.B.I., Bikash Bhawan to seek clarification in the matter and she also received a reply in which they confirmed the report of the Armed Guard. She also proved that letter Ext. M-10 which she had sent and the reply of the S.B.I., Ext. M-10/1. The witness has further stated that at the time of receiving any document as a matter of practice the substaff does not sign as a token of receipt of the same. She also further stated that normally the Clerk of the Clearing Dept. is supposed to make entry in the Outward Clearing Register and at times the substaff of the Clearing Dept. also makes entries in the Register. She stated, in this case, the relevant entry was made by Amal Chowdhury. She stated that she had also reported the matter to the Salt Lake Police Station, copy of the FIR is Ext. M-11. In her cross-examination, she stated that at the relevant time the Branch Manager of the Salt Lake Branch was Mr. S.K. Ganguly. She also stated that on 27th January, 1996 she was present in the Bank. She further stated that the letter dated 9-2-1996 was written by the Manager to Nar Bahadur Gurung, the letter being Ext. W-11 and Nar Bahadur Gurung also replied to the said letter, Ext. W-12. She also stated that she has no knowledge whether any action was taken against Nar Bahadur Gurung. She has further stated that for taking the cheuqe for clearance re-return the substaff is paid travelling allowance, but according to her, no payment was made to Amal Chowdhury, the workman concerned in this case because irregularity was detected.

7. So far as the documents are concerned, Ext. W-1 is the memo issued to the workman concerned, Amal Chowdhury on 1-2-1996 asking him as to why he had not returned the cheque worth Rs. 25000/- which was handedover to him on 24-1-1996, Ext. W-2 is the reply submitted by the workman concerned to this letter dated 1-2-1996. In this letter the workman had clearly stated that on 24-1-1996 he was not handedover any cheque to be returned to the State Bank of India, Bikash Bhawan, Ext. W-1/1 is another memo dated 9-4-1996 which was issued to the workman concerned, in which allegations were levelled against him that he had received the cheque worth Rs. 25000/- on 24-1-1996, but he did not take the cheque to the return counter at S.B.I: Bikash Bhawan and had handedover the same to N.B. Gurung and the cheque could not be presented in time and, therefore, the Bank suffered loss. Reply to this memo is Ext. W-2/1, which is dated 2-5-96. In this reply the workman clearly stated that on 24-1-96 he had gone to N.B.O. Calcutta and had brought some cheques and had charged usual conveyance

allowance also. Thereafter he prepared some short slips and entered the same in the register as the practice is that he makes the entries when the Clerk concerned is not available. He further stated that he was never handedover any return cheque by the concerned officer, because he had told him that he was feeling fiverish and thereafter he was absent on the following days till 29-1-1996. So, it is obvious that against both the memos issued to him by the Bank, he clearly denied that he had received any such cheque on 24-1-1996 as alleged. Ext. W-3 is the application for leave filed by the workman concerned on 30th January, 1996 for grant of leave on 27-1-1996 and 29-1-1996 on account of his illness and he had also attached a medical certificate with his application. It is admitted that his leave was granted by the management. Ext. W-4 is the chargesheet which gives the details of the allegations against hint. Ext. W-5 is the report of the Enquiry Officer dated 7-7-1997 submitted to the disciplinary authority. From this report it appears that the Enquiry Officer had by-furcated the charge in four sub-heads for considering those different allegations and after considering the allegations in the light of the evidence and materials produced before him, he had come to the conclusion that none of the allegations was proved against the workman concerned. It appears that in the concluding portion of the report the Enquiry Officer has observed. Thus a thread-bare enquiry was conducted on all the segments of the charge from different angles as spelt out in the charegesheet. In totality, as sub-divided herein-above. It is thus concluded that the charge and/or sub-charges against the CSE is not proved on account of the faulty practices in contravention of the bank's rules/Manual are in vogue at the branch concerned and the various extraneous cover-ups undertaken by the branch management to justify the system failure in respect of the counter return aspect of the branch working. "Ext. W-6 is the notice given to the workman concerned proposing punishment against him in which the report to the Enquiry Officer has been considered, but the disciplinary authority has differed from the findings of the Enquiry Officer. Ext. W-7 is the reply sent by the workman concerned by way of his submission on receipt of the notice of proposed punishment, Ext. W-6. Ext. W-8 is the final order by which the punishment was imposed on the workman. Ext. W-9 is the appeal filed by the workman concerned against the imposition of punishment giving out the grounds for differing with the action taken by the disciplinary authority. Ext. W-10 is the order of the appellate authority dated 18-2-1998. Ext. W-11 is the memo issued to Nar Bahadur Gurung by the Branch Manager on 9-2-1996 and Ext. W-12 is the reply to this memo by Nar Bahadur Gurung. From this letter dated 12-2-1996 it becomes clear that the said Nar Bahadur Gurung had clearly stated that the cheque concerned for Rs. 25000/- was handedover to him by the department at 12.15 P.M. on 27-1-1996 for counter return to S.B.I., Bikash Bhawan.

On the other hand, Ext. M-1 is the extract of entry in the register maintained for the return cheques which is said to be in the hand writing of the workman concerned, which is an admitted position. Ext. M-2 is the report submitted by the Branch Manager regarding the incident containing allegation against the workman concerned to the Regional Manager, North Calcutta Region. Ext. M-3 is the xerox copy of the extracts of the account sheet. Ext. M-4 is the cheque concerned for Rs. 25000/- issued in favour of one Gobinda Karmakar by the holder of the Account No. 4682, namely, Pradip Sanky. Ext. M-5 is the extract of the entry in the register. Ext. M-6 is the slip regarding controvertial cheque. Ext. M-7 is the report submitted by the Incharge of the Clearing Dept. of the Salt Lake Branch of the Bank to the Branch Manager on 30th January, 1996 and Ext. M-8 is the endorsement of the Clerk concerned. Ext. M-9 is the report submitted by Mrs. Manisha Sikdar on 29-1-1996 to the Branch Manager. It also relates to the same matter regarding which Ext. M-7 was submitted to the Branch Manager by the Incharge of the Section. Ext. M-10 is the similar report submitted to the Manager by the said Mrs. Manisha Sikdar regarding the incident in question. It was all after 27-1-1996 when the cheque in question was returned from S.B.I., Bikash Bhawan on the ground that it was not presented in time. At this point the entire management started thinking of putting the blame of this default on somebody and it appears that the workman concerned has been pointed for this purpose by the different officials of the Branch as he happened to be a substaff of the department concerned and he was present at the branch on 24-1-1996 when the cheque was received in the Branch from the Non-Business Office. Ext. M-10/1 is the letter from the State Bank of India, Bikash Bhawan to the Manager of the Salt Lake Branch of the Central Bank of India, which is dated 3-2-1996 and by this letter the S.B.I. had informed the Branch that the cheque worth Rs. 25000/- could not entertained as it was produced after the time limit had expired. Ext. M-11 is the letter sent by the said Mrs. Manisha Sikdar to the Office Incharge of the P.S., Salt Lake. By this letter she had asked the Police to take action against the holder of the account from which the aforesaid cheque worth Rs. 25000/- was issued and which could not be honoured because of some problems and the account holder had promised to return the amount to the Bank, but had not done so. It has no relevance with the matter under consideration.

8. It is, therefore, clear from the materials detailed above that a cheque worth Rs. 25000/- was issued by the holder of Account No.4682, Pradip Sanky in favour of another person and that it was drawable at the Central Bank of India, Salt Lake Branch. The cheque was received in the Salt Lake Branch from the Non-business Office on 24-1-1996 and it was supposed to be sent to the State Bank of India, Bikash Bhawan for clearance, but it appears that on 24-01-1996 the cheque could not be sent to the Bikash

Bhawan Branch of State Bank of India and for the first time on 27-01-1996 it came to the notice of the officers of the Bank that this cheque could not sent in time. However, the cheque was then sent, but it was returned unaccepted from the S.B.I. on the ground that it was not presented within the time limit. Thus, the Salt Lake Branch of the Central Bank of India faced a situation in which they had to incur the liability of Rs. 25000/- because of this default. The problem then arose as to somebody should be held responsible and should be blamed for it. Admittedly the workman concerned happened to be a substaff in the Clearing Dept. of the Branch at the relevant time and on that date he had brought the cheque in question alongwith many other cheques from the Non-business Office in the first hour. The cheque could not be delivered by him to the S.B.I., Bikash Bhawan as it was supposed to be. Then the management started taking a plea that the cheque was handed over to this workman on 24-01-1996, but he did not take the cheque to the S.B.I., Bikash Bhawan; rather, he handed over the cheque to Nar Bahadur Gurung, the Security Gaurd and Nar Bahadur Gurung did not care to produce the cheque in the S.B.I. Bikash Bhawan and, therefore, this loss was caused to the Bank due to negligence and non-performance of duty by this workman concerned. Accordingly, memo was issued to him twice, but on both the occassions the workman concerned replied to the Bank that such cheque was never handed over to him for delivery to the counter of S.B.I., Bikash Bhawan and as a matter of fact, he was feeling fiverish and subsquently for several days, he was absent and later he had applied for leave which was granted to him. Therefore, he denied any responsibility of this kind. The Bank then tried to catch hold of Nar Bahadur Gurung, the Security Guard by saying that he had received the cheque from the workman concerned on 24-01-1996, but he did not deliver it to the counter of S.B.I., Bikash Bhawan. In reply to this memo Shri Gurung fully denied that he was handed over any cheque by the workman concerned. Actually, this Nar Bahadur Gurung happened to be a Security Guard and it was none of his duty to take cheque for clearance and, therefore, the position of the Bank became delicate and then it abstained from taking any action against this Gurung. So, the only escape goat which could be caught hold of was the workman concerned and the charge sheet was drawn-up against him and the departmental enquiry was also held. In course of departmental enquiry several witnesses were examined by both the parties and the concerned documents were also produced before the Enquiry Officer who also happened to be an officer of the Bank itself, but when the Enquiry Officer considered all the materials appearing before him, he felt that the charges were being levelled against the workman concerned without any foundation or basis. After analysing the evidence before him, the Enquiry Officer found that actually there was no material to show that the workman concerned was handed over such cheque on 24-01-1996 at all for delivering to the S.B.I., Bikash Bhawan and on subsequant dates he was absent for which leave was granted to him by the management. In the charge-sheet an allegation was made against the workman that he had made entry in the register of the Clearing Dept. of his own without authority, but in course of hearing it was revealed that actually this kind of practice was prevelant in the Bank and there was nothing unusual in it. One thing also transpired that when any cheque is handed over to any substaff for taking the same to the clearing house, his signature is not obtained so that responsibility may be fixed on him. In such a case it becomes difficult to fix the responsibility. The evidence, on the other hand, which appeared before the Enquiry Officer and also before this Tribunal is that the cheque in question worth Rs. 25000/- was handedover to this Gurung by the Department itself on 27-01-1996 at 12.15 P.M. It also appears that another Peon of the Bank attached to this Dept., namely, Nilkanta Ghosh also handed over a cheque of Rs. 60,000/- to him for taking the same to the S.B.I., Bikash Bhawan on 27-01-1996 and accordingly this Gurung who had no duty to do in any of the kind, left the Bank unattended where he was required to be present during working hours and produced the cheques before the counter of the S.B.I., Bikash Bhawan, but this cheque worth Rs. 25000/-, which was supposed to be presented on 24-01-1996 could not be accepted by the S.B.I., Bikash Bhawan and it was returned and, therefore, the problem arose. If it is so that the cheques were handed over to this Nar Bahadur Gurung for presentation before the S.B.I., Bikash Bhawan, it was a serious kind of lapse on the part of the authorities of the Bank. There were two mistakes in it. Firstly, that the person who was supposed to be a Security Guard of the Bank was asked to leave the Bank unattended and unsafe and secondly, he was asked to do something which was no part of his duty. So far as this Gurung is concerned, he has clearly admitted that he received the two cheques and had taken the same to the S.B.I., Bikash Bhawan, but this cheque worth Rs. 25000/- was not accepted and accordingly he took it back and returned to the office of the Bank. The Enquiry Officer, in this view of the matter, came to the conclusion that whatever had happened was on account of the fact that the rules and manuals of the Bank were not being particularly followed by the Branch of the Bank and such incident had taken place resulting in loss to the Bank, but considering the circumstances appearing before him the Enquiry Officer found that the workman concerned could not be held guilty of having committed anything for which he was chargesheeted. Thus, it is clear that the Enquiry Officer not only absolved the workman of the responsibility of the chargesheet; rather, he castigated upon the Bank regarding unfunctional system of work. Therefore, the management tried to save their face by imposing punishment on this workman and the disciplinary authority deferred with the report of the Enquiry Officer and imposed punishment on the workman.

9. It appears that so far as the disciplinary authority is concerned, no rule forbids the disciplinary authority from differing with the report of the Enquiry Officer, but any such decision has to be taken based on solid materials and sound reasonings and not only on whims. The allegation of the union is that the disciplinary authority took this view on whims and it did not assign sufficient reasons for disagreeing with the report of the Enquiry Officer. The discipliary authority can differ with the opinion of the Enquiry Officer, but sufficient reasons have to be shown for this purpose. The order cannot be whimsical and criptic. In his order of proposed punishment dated 03-09-1997, Ext. W-7, the disciplinary authority appears to have assigned reasons for differing with the opinion of the Enquiry Officer by siting some evidence on record, but he has failed to realised that the evidence clearly indicated that there is no positive materials to show that the workman concerned have received the cheque in question on 24-01-1996 or that he had handedover the cheque to Nar Bahadur Gurung on that date. It has already been stated earlier that as soon as the two memos were issued against the workman concerned, he replied and clearly denied that he had received any such cheque on 24-01-1996 and thereafter he was not available in the Bank. On the other hand, when a memo was issued to the Security Guard, Nar Bahadur Gurung, he celarly stated in his reply, Ext. W-12 that the cheque in question was actually handedover to him by the Bank on 27-01-1996 at 12.15 P.M. So, it becomes clear that the entire story that the cheque was handedover to the workman concerned on 24-01-1996 or that he had handedover the cheque to Nar Bahadur Gurung on that date and went away or that Nar Bahadur Gurung kept the same in his bag and went away to attend a marriage party and it remained in his bag till 27-01-1996 when he discovered it, has no basis and foundation and holding the workman guilty on this ground does not appear to be a proper reasoning. Similar is the case with the appellate authority also. The appellate authority is also not supposed to be passing an order mechanically, even though the order may be quasi-judicial in nature. If the appeal is preferred before the appellate authority, he is supposed to apply mind. In this connection, it has been ovserved by their Lordships of the Hon'ble Supreme Court in the case of Mahabir Prasad V. State of U.P. (AIR 1970 SC 1302) "it must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him; it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision on a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensure that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency." similarly, in the case of Indian Bank, V. Evalappan (1979-II-LLJ 450) it was observed by their Lordships of the Madras High Court that the ground that the order of dismissal is not a reasoned one in the circumstances of this case cannot be said to be merely technical. It is of considerable substance and the defect is not a formal one. Therefore, considering this principle, it becomes clear that first of all the disciplinary authority did not supply proper reasonings for coming to a conclusion by differing with the opinion of the Enquiry Officer and secondly the appellate authority, excepting for endorsing the view of the disciplinary authority, did not apply his kind at all in the matter of awarding punishment to the workman concerned.

10. In the circumstance, the punishment awarded to the workman concerned does not appear to be proper and legal and the same is fit to be set aside. The punishment awarded on the workman concerned is accordingly set aside and the increment stopped is ordered to be released in his favour immediately.

The reference is disposed of accordingly.

Dated, Kolkata,

The 26th December, 2002.

B. P. SHARMA, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 598/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-1-2003 को प्राप्त हुआ था।

[सं. एल-12011/69/2001-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 391.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 598/2001) of the Central Government Industrial Tribunal-cum-LC, Chennai as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 1-1-2003.

[No. L-12011/69/2001-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th November, 2002

Present : K. Karthikeyan, Presiding Officer

INDUSTRIAL DISPUTE NO. 598/2001

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workmen and the Management of Syndicate Bank.]

BETWEEN

The President, Syndicate Bank Employees Union, Chennai. —I Party/ Claimant

AND

The Deputy General Manager, Syndicate Bank, Z.O., Chennai. —II Party/Management

APPEARANCE :

For the Claimant : M/s. R. Gomathy, & P. Manimeghalai, Advocates

For the Management : M/s.P.Sukumar, A.Thangappan, & K. C. Krishnamoorthy, Advocates.

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned industrial dispute for adjudication vide Order No. L-12011/69/2001/IR(B-II) dated 20-07-2001.

On receipt of the order of reference from the Government of India, Ministry of Labour, this case has been taken on file as I. D. No. 598/2001 and notices were sent to the parties to the dispute by registered post, with a direction to appear before this Tribunal on 23-8-2001 to file their respective Claim Statement and Counter Statement and to prosecute this case further. Accordingly, learned counsel, on record on either side have filed their respective claim statement and counter statement and prosecuted this case further.

Upon perusing the Claim Statement, Counter Statement, the other material papers on record, after hearing the arguments advanced by the learned counsel on either side and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above mentioned order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

> "Whether the action of the management of Syndicate Bank in imposing the punishment of reduction in basic pay by two stages for 8 years to Sri S. Ananthanarayanan is legal and justified ? If not, what relief is the workman entitled to?"

2. The averments in the Claim Statement filed by the I Party/Claimant the President, Syndicate Bank Employees' Union (hereinafter refers to as Petitioner) are briefly as follows: —

This dispute has been raised by the I Party/ Syndicate Bank Employees Union espousing the cause of the workman Sri S. Ananthanarayanan challenging the action of the management of Syndicate Bank in imposing the punishment on the concerned workman by reduction in his basic pay by two stages for 8 years for an alleged misconduct committed by the concerned workman. The concerned workman Sri S. Ananthanarayanan was working as Clerk in the II Party/Management Syndicate Bank (hereinafter refers to as Respondent) at Armenian Street Branch from 7-2-84 to 15-9-90. When he worked as Clerk at Regional Inspectorate he was issued with charge sheet dated 18-12-96 and subsequently corrigendum dated 23-12-96 was also issued to charge sheet. It is alleged that on 22-1-86 when he worked as Receipt 1 cashier there had been a misappropriation/theft of cash of Rs.1,00,000/- at the branch and that he colluded with the staff members mentioned in the charge sheet worked in Cash department by inflating SB payment figure and misappropriated/caused misappropriation of Rs. 1,00,000/- on 22-1-.86 and further with a view to suppress the said fraudulent acts destroyed/caused destruction of relevant documents/records mentioned in the charge sheet which constituted gross misconduct within the meaning of Clause 19.5 of Bipartite Settlement. He requested the bank management by a letter dated 11-2-97 to supply the copy of the statements recorded by CBI officials for investigation and findings of CBI to enable him to submit his explanation. But the Respondent without providing those copies to him proceeded with the departmental enquiry by appointing an Enquiry Officer. In the enquiry three witnesses were examined and 56 documents were marked on the side of the management. The concerned workman, the charge sheeted employee examined himself as defence witness No. 2 and no documents were marked on his side. After the concerned workman submitted his written submission, the Enquiry Officer in his report dated 23-10-99 gave a finding that the charges levelled against the concerned workman has been proved by the Respondent/Management by circumstantial evidence. After the submission of comments to the Enquiry Officer's report by the Petitioner Union, after a personal

hearing by the Disciplinary Authority, the punishment was imposed on the concerned workman for reduction of basic pay by two stages on 8 years by an order dated 7-2-2000. Against that the concerned workman preferred an appeal to Appellate Authority. But the Appellate Authority concurred with the punishment imposed by the Disciplinary Authority, dismissed the appeal. Then this industrial dispute has been raised by the Union which has been referred to this Tribunal for adjudication. The charge sheet was issued after a lapse of a decade for the incident took place in the year 1986 and the enquiry proceedings were initiated after lapse of two years. The lapses on the part of the management were only to safeguard the real culprit involved in the alleged incident. Though CBI Investigation was started and completed within a year, the Respondent/ Management failed to take appropriate action in appropriate time. The findings of the Enquiry Officer is one sided, perverse, biased and it is not based on any material evidence. The alleged misappropriated amount/missing cash of Rs.5,00,000/- on the different occasions including on 22-1-86 has been reimbursed by the other employees who were worked in the cash department at the relevant time except the charge sheeted employee and the same is accepted by the Respondent/Management. This shows that the management intentionally and wantonally made the concerned workman charge sheeted employee as scapegoat for no fault of his. Based on the biased findings of the Enquiry Officer, the Disciplinary Authority imposed the punishment and the Appellate Authority also concurred with the same. The punishment imposed upon the concerned workman is harsh, illegal and highly disproportionate to the charges levelled against him. This Hon'ble Tribunal by invoking its discretionary powers may restore the concerned workman with full pay and all increments due to him in the normal course of service with all other attendant benefits. Therefore, it is prayed that this Hon'ble Tribunal may be pleased to set aside the punishment of reduction of basic pay by two stages for 8 years imposed upon the concerned workman as illegal and unjustified and consequently direct the Respondent/ Management to restore the concerned workman with full pay with all increments due to him in the normal course of service with all other attendant benefits.

3. The averments in the Counter Statement filed by the II Party/Management Syndicate Bank, Chennai, (hereinafter refers to as Respondent) are briefly as follows:—

The Petitioner Union raised this industrial dispute before the Regional Labour Commissioner, Central, on 10-10-2000 when Sri S. Ananthanarayanan was in employment under the Respondent/Bank subsequent to the raising of the dispute, he had retired from the services of the bank on 20-01-2001 under VRS scheme of the bank. The dispute raised before the Regional Labour Commissioner ended in failure, after the charge sheeted employee has been relieved from service i.e. 29-1-2001. As on the day of reference of the dispute to this Hon'ble Tribunal, the concerned workman is ceased to be a workman of the bank and consequently as a member of the I Party Sri S. Ananthanarayanan having quit the bank and received all terminal benefits in full settlement cannot stake any claim against the bank by this dispute before the Hon'ble Tribunal. Therefore, the Petitioner Union has no locus standi to espouse the cause of the charge sheeted employee as he ceased to be a member of the Petitioner Union and also in view of the fact that the dispute has not arisen on account of the discharge, dismissal or termination. The dispute has been raised under Section 2k of the Industrial Disputes Act, as such, the dispute should have been espoused by a substantial section of the Respondent/ Bank and the said workmen should have authorised the Petitioner Union to raise the dispute on the punishment awarded to the concerned clerk. The Petitioner Union is put to strict proof of its authority and competence to take up the cause of the charge sheeted employee and raise the dispute. There is no valid industrial dispute espousing the cause of the concerned clerk and therefore, the order of reference is bad in law. In the main branch of the Respondent/Bank at Armenian Street, Chennai, there was misappropriation of cash/theft of cash amounting to Rs. 5,00,000/- on three dates, i.e. 2 lakhs on 21-10-85, one lakh on 22-1-86 and 2 lakhs on 21-4-86 and the bank had taken action against all the connected workmen/officers. The concerned workman Sri. S. Ananthanarayanan is connected to the 2nd transaction i.e. 22-1-1986 on which date there was a misappropriation of Rs.1,00,000/-. At the relevant time, there were five cashiers at that branch viz. main cashier, S.B. cashier, Receipts 1, 2 and 3 Cashiers and they maintain cashiers' scrolls relating to the transactions handled by them. The work of said cashiers was supervised by three staff/officers and they maintain parallel scrolls viz. (a) the IBC Scroll Officer (covering transactions of Receipts 2 and 3 Cashiers) (b) the SB scroll officer (covering transactions of S.B. cashier) and (c) the main cash/scroll officer (covering transactions of Receipts 1 Cashier and Main Cashier). The main cashier accepts cash receipts and make cash payments and he was also responsible for maintaining the main cashier's scroll and arriving at cash consolidation covering the total receipts/payments of all the five cashiers, cash closing balance. At the end he has to arrive at the closing balance and hand over the closing balance cash to the joint custodians for its safe custody. The S.B. cashier receive and make payments relating to the S.B. customers only. As such, the total payments of the branch were handled only by main cashier and S.B. cashier. Receipts 2 and 3 cashiers only accept cash receipts from banks' customers relating to various departments. The Receipt 1 Cashier also accepts cash receipts only (customers of certain departments) and he also assisted the main cashier in arriving at the cash consolidation, closing balance of the day. The concerned workman being the Receipts 1 cashier as on 22-1-86 had also accepted in

the enquiry that he had carried out the above mentioned duties at the branch including assisting of the main cashier for consolidation etc. At the relevant time, cash consolidation scroll was maintained at the branch wherein, consolidation of cash transactions pertaining to all/ different heads of accounts were entered. The branch also maintained day book, wherein all the credit and debit transactions and the cash transferred and clearing of various heads of accounts are entered to confirm the correctness as to the accounting of the day's transactions. The day book of the branch used to be written at the relevant time on the basis of cash consolidation scroll for cash transactions and sub-day books of clearing and transfer for clear and transfer transactions. The concerned workman in his evidence in the enquiry also confirmed the said procedures followed at the branch. The misappropriation of cash of Rs.1,00,000/- on 22-1-96 was committed by inflating S.B. payment figures by Rs.1,00,000/- in the cash consolidation scroll and inflated the S.B. payment figures as per the cash consolidation scroll was taken in the day book and the corresponding cash was misappropriated/stolen. By adopting similar modus operandi Rs. 2,00,000/- each was misappropriated/stolen on 21-10-85 and 21-04-86. In order to suppress the said fraudulent acts, main cashier scroll, main cash officer's scroll, cash consolidation scroll, S.B. scrolls, slip bundles etc. were removed. In the absence of these records, the cash receipts and payments of main cashier and S.B. Cashier were arrived at on the basis of other available records. The concerned workman as Receipt Cashier No.1 was assisting the main cashier in arriving at the closing balance and the consolidation of cash. He admitted the same in the enquiry. The inflating of S.B. figures in the cash consolidation scroll without his collusion could not have been carried out. The Receipts 2 and 3 Cashiers only accepted the cash receipts and were not assigned with the work of arriving at the closing balance or consolidation of cash. Therefore, their roll and also that of IBC scroll officer who supervised the transactions in the misappropriation is ruled out. Similarly S. B. payments figure and receipts figures were confirmed by the reconstructed figure book and S.B. sub-day books to be Rs.63,700.05 and Rs. 1,26,320.20 payments. Therefore, the same figure should have been reflected in the S. B. Cashier's and S.B. cash officers scroll also. In view of this inflation of S.B. payment figure from Rs. 1,26,320.20 to Rs. 2,26,320.20 was done at a subsequent stage while incorporation the S.B. figures for arriving at the day's cash consolidated closing balance in the main cashier's scroll, the work of which was assisted by the concerned workman charge sheeted employee, the Receipt I-cashier. Further, the closing balance reflected in the main cashier's scroll on the basis of consolidation of cash figures of other cashiers arrived at by Receipt 1 cashier. Consolidations of the cash in the main Cash Officers Scroll and cash consolidation scroll should have been the same as these figures ought to be tallied with each other scrolls. Therefore, the charge sheeted employee who was Receipt 1 cashier is responsible/accountable for misappropriation/theft of cash of Rs.1,00,000 on 22-1-86 and removal of records to conceal the misappropriation along with that of main cashier, main cash officer, and Sub Manager (Cash). The misappropriation came to light in 1987 and immediately thereafter, the bank caused detailed investigation into the matter through its vigilance unit. On conclusion of investigation charge sheets were issued to the concerned in 1996. Enquiry was conducted and the Enquiry Officer submitted his report dated 23-10-99 with his findings that the charges levelled against the charge sheeted employees have been proved. On the basis of the findings of the Enquiry Officer, Disciplinary Authority conducted the proceedings and has passed final order of punishment of reduction of basic pay by two stages for eight years and the same has been subsequently confirmed by the Appellate Authority in the appeal preferred by the charge sheeted employee. Out of the seven employees charge sheeted for misappropriation of cash of Rs.5.00 lakhs on 21-10-85, 22-01-86 and 21-4-86 four charge sheeted employees voluntarily paid Rs.5.00 lakhs. However, they were also awarded with same punishment of reduction of basic pay by two stages for eight years except one employee for whom the period was not specified in view of his superannuation in the same month i.e. February, 2000. Since charges were proved against charge sheeted employees are also liable for appropriate punishment. By misappropriating the bank's cash, the charge sheeted employee has derived undue pecuniary benefits for himself and others and the consequent corresponding financial loss to the bank. The past record is not relevant in cases of serious misconduct committed by the employees. The misconducts of colluding with other employees to misappropriate/destroy records to conceal misappropriation are serious misconducts. The Disciplinary Authority has not violated Bipartite Settlement provisions as the Bipartite Settlement does not restrict the period for which increments can be reduced. It is not permissible for the I Party/Union to persuade this Hon'ble Tribunal to re-appreciate the evidence and come to a conclusion different from that of Enquiry Officer and also to invoke discretionary powers as the punishment of reduction in basic pay by two stages for eight years awarded is not covered under section 11A of Industrial Disputes Act, 1947. In view of the charge sheeted employee's relieved from the bank under VRS on 20-01-2001 the actual effect of punishment imposed on him was less than a year instead of eight years. Therefore, the Tribunal may pass an award dismissing the claim of the Petitioner Union.

4. When the matter was taken up for enquiry finally, no one has been examined on either side as a witness. No document has been marked as an exhibit on either side. Learned counsel on either side has advanced their respective arguments.

5. The point for my consideration is —

"Whether the action of the management of Syndicate Bank in imposing the punishment of reduction in basic pay by two stages for 8 years to Sri S.Ananthanarayanan is legal and justified? If not, what relief is the workman entitled to ?"

Point :—

The concerned workman Sri S.Ananthanarayanan who was the charge sheeted employee had retired from service of the bank on 20-1-2001 under the VRS scheme of the bank. On submission of an application dated 6-11-2000 concerned workman to the Respondent/Bank management opting for voluntary retirement from the bank services under the Voluntary Retirement Scheme, 2000 unconditionally, orders were passed by the Deputy/ Assistant General Manager of Zonal office of Syndicate Bank Chennai dated 11-1-2001, wherein the bank management has accepted the application of the concerned workman opting for voluntarily retirement from service. The xerox copy of that order of acceptance by the bank management has been filed by the Respondent/Bank. It is not disputed by the Petitioner Union. In pursuance of the same a relieving letter dated 20-01-2001 relieving the said workman Sri S.Ananthanarayanan from the services of the bank on voluntarily retirement under the Scheme. A xerox copy of that relieving letter dated 20-1-2001 has been filed on the side of the Respondent/Management, which is not disputed by the I Party/Union. The xerox copy of the letter dated 25-1-2001 sent by Respondent/Bank to the Assistant Labour Commissioner (Central) in respect of the industrial dispute raised by the I Party/Union in the matter of negotiation of punishment to the concerned clerk Sri S.Ananthanarayanan also has been filed as the management document. In that letter itself, it has been clearly disclosed that Sri S. Ananthanarayanan was relieved from the services of the bank on 20-01-2001 on voluntary retirement and since he ceased to be an employee of their bank, by implication, he also ceased to be a member of the Syndicate Bank Employees Union. This document also not disputed by the I Party/Union. The xerox copy of Rules and Bye laws of Syndicate Bank also has been filed as a document on the side of the Respondent/Management. As per the clause No. 3 of the Bye-laws of the Union, only the workman employ in the Syndicate Bank shall be entitled to become an ordinary member of the Union. This has not been disputed by the I Party/Union. From this it is seen that the Union has no locus standi to raise this under the given circumstances and the dispute raised by the Union become infructuous. All these documents filed by the Respondent/Management as xerox copies referred above have not been disputed by the I Party/Union. It is the definite case of the Respondent/Management in their Counter Statement that the concerned workman Sri S. Ananthanarayanan having quit the bank and received all the terminal benefits in full settlement, cannot stake any claims against the bank by this dispute before this Hon'ble Tribunal and that as the said workman ceased to be a workman of the bank and consequently as a member of the I Party/Union, the I Party/Union has no locus standi to espouse the cause of the charge sheeted employee. This averment has not been disputed as incorrect by the I Party/ Union. On the basis of the facts of this case as evidenced from the documents filed on the side of the Respondent/ Management which are not disputed, the concerned workman ceased to be a workman of that Respondent/ Bank on the date of the reference made by the Govt. by its order dated 20-7-2001 and since he ceased to be the workman of the bank, he ceased to be the member of the Union also. Therefore, the Petitioner Union has no locus standi to espouse the cause of the concerned workman who ceased to be the member of the Union. Further, the dispute has been raised under section 2k of the Industrial Disputes Act, 1947, as such, the dispute should have been espoused by the substantial section of the workmen of the Respondent/Bank and the said workmen should have authorised the Petitioner Union to raise the dispute on the punishment awarded to the concerned clerk. The Petitioner Union has not proved this aspect with acceptable evidence for this Tribunal to come to the conclusion that the Petitioner Union has got authority and competence to take up the cause of the concerned workman and to raise this dispute. Under such circumstances, it can be easily concluded that the claim made by the I Party/ Union on behalf of the concerned workman Sri S. Ananthanarayanan who ceased to be the workman in the Respondent/Bank as well as member in the Petitioner Union has become infructuous. Hence, it is not necessary to adjudicate as to whether the action of the management of Syndicate Bank in reducing the basic pay of Sri S. Ananthanarayanan Clerk by two stages for eight years is justified or not and to find out as to whether the concerned workman is entitled to any other relief or not. Thus, the point is answered accordingly.

6. In the result, an Award is passed holding that the I Party/Claimant Union's demand on behalf of the concerned workman cannot be granted, as the concerned workman Sri S.Ananthanarayanan himself is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Exhibited :—

On either side : Nil

नई दिल्ली, 7 जनवरी, 2003

का. आ. 392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 3/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-1-2003 को प्राप्त हुआ था।

[सं. एल-12011/174/2001-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2002) of the Central Government Industrial Tribunal-cum-LC, Chennai as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 1-1-2003.

[No. L-12011/174/2001-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th November, 2002

PRESENT:

K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 3/2002

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Workmen and the Management of Syndicate Bank.]

BETWEEN

The President Syndicate Bank Employees Union	:	I Party/ Claimant

AND

The Assistant General Manager Syndicate Bank, Chennai.	:	II Party/Management

APPEARANCE:

For the Claimant	:	M/s. P.Manimeghalai R.Gomathi, N.Iesabella, N.Ramamni, Advocates
For the Management	:	M/s.P.Sukumar, A.Thayaaparan, Advocates.

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned industrial dispute for adjudication vide Order No.L-12011/174/2001/IR(B-II) dated 10-12-2001.

On receipt of the order of reference from the Government of India, Ministry of Labour, this case has been taken on file as I.D. No. 3/2002 and notices were sent to the parties to the dispute by registered post, with a direction to appear before this Tribunal on 22-1-2002 to file their respective Claim Statement and Counter Statement and to prosecute this case further. Accordingly, learned counsel on record on either side have filed their respective claim statement and counter statement and prosecuted this case further.

Upon perusing the Claim Statement, Counter Statement, documentary evidence let in on the side of the II Party/Management alone, the other material papers on record, after hearing the arguments advanced by the learned counsel on either side and this matter having stood over till this date for consideration, this Tribunal has passed the following: —

AWARD

The Industrial Dispute referred to in the above mentioned order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

> "Whether the action of the management of Syndicate Bank in reducing the basic pay of Sri S.M.Sankaran, Clerk by two stages for 8 years is justified? If not, what relief is he entitled to?"

2. The case of the I Party/Claimant Union put forth in its Claim Statement are briefly as follows:—

The I Party/Union has raised this industrial dispute espousing the cause of the concerned workman Sri S.M.Sankaran challenging the action of the Respondent Syndicate Bank Management in awarding punishment to the concerned workman by reducing his basic pay by two stages for eight years as unjustified. When the concerned workman was working at Armenian Street of the Respondent/Bank at Chennai, he was served with a charge memo dated 18-12-96 alleging that he inflated S.B. payment figure in the cash consideration scroll and had made falsification of relevant records of the bank and misappropriated a sum of Rs.2,00,000/- and that while he was working in cash department at the relevant period had colluded with other staff members working in the cash department viz. Achuthan Kutty, Sub Manager, (Cash) Sri S.Balasubramaniam, Receipt Cashier No.1 and M.S.Rao.

Main Cashier and destroyed/caused destruction of relevant documents/records to suppress the above fraudulent acts and which amounts to gross misconduct for doing acts prejudicial to the interest of the bank within the meaning of clause 19.5 of the Bipartite Settlement. For the alleged charges an enquiry was conducted and the Enquiry Officer submitted his report dated 23-10-99 holding the concerned workman as guilty of all the charges levelled against him and after submission of written submission of the concerned workman to the Enquiry Officer's report, the Disciplinary Authority issued a show cause notice for the proposed punishment and after the concerned workman submitted his written submission to the show cause notice, the Disciplinary Authority has imposed the punishment of reduction of basic pay by two stages for eight years by his order dated 7-2-2000. The appeal preferred by the concerned workman to the Appellate Authority was also dismissed on 11-5-2000. Aggrieved by that orders, the Union has raised this industrial dispute first before the Assistant Labour Commissioner (Central) for conciliation, as it ended in failure, the Govt.has referred this dispute for adjudication of this Tribunal. The findings of the Enquiry Officer is vitiated/biased one sided perverse and unreasonable. The chargesheeted employee was not given fair opportunity by the management by denying to supply the documents he had asked for perusal. Under false guise of privilege the Respondent/Management had totally denied the fair opportunity to the chargesheeted employee and thereby prevented him in submitting his explanation to the charge-sheet. The Enquiry Officer has been erroneous and hasty in his approach of concluding that the charges levelled against the chargesheeted employee has been established. He had over looked the important aspect that the basic rules and practice prevalent in the banking system in general has been flouted in that branch. His biased mechanical and pre-determined approach and non-application of mind vitiates the entire proceedings. The Disciplinary Authority while proposing the punishment totally ignored the past records and the provisions laid down in the Bipartite Settlement. The punishment imposed by him is disproportionate and harsh . By non-application of mind, the Appellate Authority also has confirmed the order of the Disciplinary Authority , hence, it is illegal and unjustified and the same has to be set aside and the Respondent/Bank may be directed to repay the amount due to the concerned workman as arrears with consequential benefits.

3. In the Counter Statement of the II Party/ Management Syndicate Bank (hereinafter refers to as Respondent) it is alleged that when the dispute was raised before the Regional Labour Commissioner by the Petitioner Union on 10-10-2000 the chargesheeted employee Mr. S.M.Sankaran was in employment of the Respondent/Bank. But subsequent to the raising of the dispute, he had retired from the services of the bank on 20-01-2001 under VRS scheme of the bank. The dispute raised before the Regional Labour Commissioner ended in failure, after the charge-sheeted employee has been relieved from service i.e. 29-1-2001. As on the day of reference of the dispute to this Hon'ble Tribunal, the concerned workman is ceased to be a workman of the bank and consequently as a member of the I Party Sri S.M.Sankaran having quit the bank and received all terminal benefits in full settlement cannot stake any claim against the bank by this dispute before the Hon'ble Tribunal. Therefore, the Petitioner Union has no *locus standi* to espouse the cause of the charge sheeted employee as he ceased to be a member of the Petitioner Union and also in view of the fact that the dispute has not arisen on account of the discharge, dismissal or termination. The dispute has been raised under section 2k of the Industrial Disputes Act, as such, the dispute should have been espoused by a substantial section of the Respondent/ Bank and the said workmen should have authorised the Petitioner Union to raise the dispute on the punishment awarded to the concerned clerk. The Petitioner Union is put to strict proof of its authority and competence to take up the cause of the charge sheeted employee and raise the dispute. There is no valid industrial dispute espousing the cause of the concerned clerk and therefore, the order of reference is bad in law. In the main branch of the Respondent/Bank at Armenian Street, Chennai, there was misappropriation of cash/theft of cash amounting to Rs.5,00,000/- on three dates i.e. 2 lakhs on 21-10-85, one lakh on 22-1-86 and 2 lakhs on 21-4-86 and the bank had taken action against all the connected workmen/officers. The concerned workman Sri S.M.Sankaran is connected to the first transaction i.e. 21-10-1985 on which date there was a misappropriation of Rs.2,00,000/-. The chargesheeted employee who was a main cashier is responsible accountable for misappropriation/theft of cash of Rs. 2,00,000/- on 21-10-85 and removal of records to conceal the misappropriation along with that of receipts I cashier, main cash officer, and Sub Manager (Cash). The misappropriation came to light in 1987 and immediately thereafter, the bank caused detailed investigation into the matter through its vigilance unit. On conclusion of investigation chargesheets were issued to the concerned in 1996. Enquiry was conducted and the Enquiry Officer submitted his report dated 23-10-99 with his findings that the charges levelled against the chargesheeted employees have been proved. On the basis of the findings of the Enquiry Officer, Disciplinary Authority conducted the proceedings and has passed final order of punishment of reduction of basic pay by two stages for eight years and the same has been subsequently confirmed by the Appellate Authority in the appeal preferred by the charge-sheeted employee. Out of the seven employees charge-sheeted for misappropriation of cash of Rs.5.00 lakhs on 21-10-85, 22-01-86 and 21-4-86 four chargesheeted employees voluntarily paid Rs.5.00 lakhs. However, they were also awarded with same punishment of reduction of

basic pay by two stages for eight years except one employee for whom the period was not specified in view of his superannuation in the same month i.e. February, 2000. Since charges were proved against charge sheeted employees are also liable for appropriate punishment. By misappropriating the bank's cash, the charge sheeted employee has derived undue pecuniary benefits for himself and others and the consequent corresponding financial loss to the bank. The past record is not relevant in cases of serious misconduct committed by the employees. The misconducts of colluding with other employees to misappropriate/destroy records to conceal misappropriation are serious misconducts. The Disciplinary Authority has not violated Bipartite Settlement provisions as the Bipartite Settlement does not restrict the period for which increments can be reduced. It is not permissible for the I Party/Union to persuade this Hon'ble Tribunal to re-appreciate the evidence and come to a conclusion different from that of Enquiry Officer and also to invoke discretionary powers as the punishment of reduction in basic pay by two stages for eight years awarded is not covered under section 11A of Industrial Disputes Act, 1947. In view of the charge sheeted employee's relieved from the bank under VRS on 20-1-2001 the actual effect of punishment imposed on him was less than a year instead of eight years. Therefore, the Tribunal may be pass an award dismissing the claim of the Petitioner Union.

4. When the matter was taken up for enquiry finally, no one has been examined on either side as a witness. No document has been marked as an exhibit on the side of the I Party/Union. 5 documents have been marked on the side of the II Party/Management with the consent of the I Party/Union. Learned counsel on either side has advanced their respective arguments.

5. The point for my consideration is—

"Whether the action of the management of Syndicate Bank in reducing the basic pay of Sri S.M.Sankaran, Clerk by two stages for 8 years is justified? If not, what relief is he entitled to?"

Point:—

The concerned workman Sri S.M.Sankaran who was the charge sheeted employee had retired from service of the bank on 20-1-2001 under the VRS scheme of the bank. Ex.M1 is the xerox copy of the application dated 1-11-2000 submitted by said Sankaran to the Respondent/Bank management opting for voluntary retirement from the bank services under the Voluntary Retirement Scheme, 2000 unconditionally. Ex.M2 is the xerox copy of the orders passed by the Deputy Assistant General Manager of Zonal Office of Syndicate Bank Chennai dated 11-1-2001, wherein the bank management has accepted the application of the concerned workman Sri S.M.Sankaran opting for voluntarily retirement from service. Ex.M3 is the xerox copy of relieving letter dated 20-1-2001 relieving the said workman Sri S.M.Sankaran, Clerk from the services of the bank on voluntarily retirement under the Scheme. Ex.M4 is the xerox copy of the letter dated 25-1-2001 sent by Respondent/Bank to the Assistant Labour Commissioner (Central) in respect of the industrial dispute raised by the I Party/Union in the matter of negotiation of punishment to the concerned clerk Sri. S.M.Sankaran. In that letter itself, it has been clearly disclosed that Sri S.M.Sankaran was relieved from the services of the bank on 20-1-2001 on voluntary retirement and since he ceased to be an employee of their bank, by implication, he also ceased to be a member of the Syndicate Bank Employees Union. As per the clause No.3 of the Bye-laws of the Union, only the workman employ in the Syndicate Bank shall be entitled to become an ordinary member of the Union and hence, the Union has no locus standi and the dispute raised by the Union become infructuous. All these documents Ex.M1 to M4 have not been disputed by the I Party/Union. Further, it is seen from Ex.M1 application of the concerned workman Sri S.M.Sankaran applying for voluntary retirement under the Scheme, he has stated about the punishment in question imposed on him by an order dated 7-2-2000. It is the definite case of the Respondent/Management in their Counter Statement that the concerned workman Sri S.M.Sankaran having quit the bank and received all the terminal benefits in full settlement, cannot stake any claims against the bank by this dispute before this Hon'ble Tribunal and that as the said workman ceased to be a workman of the bank and consequently as a member of the I Party/Union the I Party/Union has no locus standi to espouse the cause of the charge sheeted employee. These averments have not been disputed as incorrect by the I Party/Union. On the basis of the facts of this case as evidenced from the documents filed on the side of the Respondent/Management which are not disputed, the concerned workman ceased to be a workman of that Respondent/Bank on the date of the reference made by the Govt. by its order dated 10-12-2001 and since he ceased to be the workman of the bank, he ceased to be the member of the Union also. Therefore, the Petitioner Union has no locus standi to espouse the cause of the concerned workman who ceased to be the member of the Union. Further, the dispute has been raised under section 2k of the Industrial Disputes Act, 1947, as such, the dispute should have been espoused by the substantial section of the workmen of the Respondent/Bank and the said workmen should have authorised the Petitioner Union to raise the dispute on the punishment awarded to the concerned clerk. The Petitioner Union has not proved this aspect with acceptable evidence for this Tribunal to come to the conclusion that the Petitioner Union has got authority and competence to take up the cause of the concerned workman and to raise this dispute. Under such circumstances, it can be easily concluded that the claim made by the I Party/Union on behalf of the concerned workman Sri S. M. Sankaran who ceased to be the workman

in the Respondent/Bank as well as member in the Petitioner Union has become infructuous. Hence, it is not necessary to adjudicate as to whether the action of the management of Syndicate Bank in reducing the basic pay of Sri S.M.Sankaran, Clerk by two stages for eight years is justified or not and to find out as to whether the concerned workman is entitled to any other relief or not. Thus, the point is answered accordingly.

6. In the result, an Award is passed holding that the I Party/Claimant Union's demand on behalf of the concerned workman cannot be granted, as the concerned workman Sri S.M.Sankaran himself is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined:—

On either side : None

Documents Exhibited:—

For the I Party/Claimant : Nil

For the II Party/Management

Ex. No.	Date	Description
M1	01-11-2000	Xerox copy of the application given by the Concerned workman for voluntary retirement.
M2	20-01-2001	Xerox copy of the relieving letter issued by Respondent/ Management‡
M3	11-01-2001	Xerox copy of the acceptance letter of Voluntary retirement.
M4	25-01-2001	Xerox copy of the letter from Deputy General Manager To Assistant Labour Commissioner (Central)
M5	30-04-2001	Xerox copy of the failure report of Assistant Labour Commissioner (Central)

नई दिल्ली, 7 जनवरी, 2003

का. आ. 393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 59/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-1-2003 को प्राप्त हुआ था।

[सं. एल-12012/6/97-आई.आर. (बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 393.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 59/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workman, which was received by the Central Government on 1-1-2003.

[No. L-12012/6/97-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT:

Shri B. G. SAXENA, Presiding officer

REFERENCE NO. CGIT: 59/2002

BANK OF MAHARASHTRA

AND

SHRI PRADEEP MAHADEO PUDKE

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-12012/6/97/IR(B-II) dt. 8-10-97 on following schedule.

SCHEDULE

"Whether the action of the Bank of Maharashtra in terminating the services of Sh. Pradeep Mahadeo Pudke, part-time Scavenger/Sweeper w.e.f. 24-9-1994 is legal and justified? If not, to what relief the said workman is entitled?"

In this reference Shri S.T. Sahasrabuddhe Union representative of workman has moved application that the dispute has been settled between the management and the workman. Workman Pradeep Mahadeo Pudke was terminated on 24-9-94. He has been reinstated in service by the bank w.e.f. 1-4-99, hence no dispute is pending now.

ORDER

As the dispute has been settled between the workman and the management, no dispute is pending for adjudication. The reference is therefore disposed of accordingly.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 697/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-1-2003 को प्राप्त हुआ था।

[सं. एल-12012/9/99-आई.आर. (बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 394.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 697/2001) of the Central Government Industrial Tribunal-cum-LC, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 1-1-2003.

[No. L-12012/9/99-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 26th November, 2002

PRESENT :

K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE No. 697/2001

(Tamil Nadu Principal Labour Court CGID No. 345/99)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act 1947 (14 of 1947), between the Workmen and the Management of Indian Bank, Chennai.]

BETWEEN

The General Secretary, Indian Bank Employees Association, Chennai.	:	I Party/Claimant

AND

The Deputy General Manager, Indian Bank, ZO, Chennai.	:	II Party/Management

APPEARANCE :

For the Claimant :	M/s. R.Rengaramanujam & J. Muthukumaran, Advocates
For the Management :	M/s. Aiyar & Dolia & N. Krishnakumar, Advocates

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned industrial dispute for adjudication vide Order No.L-12012/9/99/IR(B-II) dated 31-05-99/11-05-1999.

This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where the same was taken on file as CGID No. 345/99. When the matter was pending enquiry in that Principal Labour Court, the Government of India, Ministry of Labour was pleased to order transfer of this case also from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Tamil Nadu Principal Labour Court, this case has been taken on file as I.D. No. 697/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 15-10-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and filed their respective Claim Statement and Counter Statement.

When the matter was taken up for enquiry finally, no one has been examined as a witness on either side. No document has been marked as an exhibit on the side of the I Party/Claimant. Five documents filed on the side of the II Party/Management were marked by consent as Ex. M1 to M5. When the matter was taken up for hearing the arguments of counsel on either side on 18-9-2002, on that day the learned counsel for II Party/Management alone has advanced his arguments. In the absence of the I Party/Union and their counsel on record and to advance their side arguments, it was held as no arguments for the I Party when the matter was reserved for orders.

Upon perusing the Claim Statement, Counter Statement, documentary evidence let in on the side of the II Party/Management alone, the other material papers on record, after hearing the arguments advanced by the learned counsel for the II Party/Management alone, and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

> "Whether the termination of Shri B. Neelakandan sub-staff by the management of Indian Bank is justified? If not, what relief is he entitled to?"

2. The averments in the Claim Statement of the I Party/Claimant Indian Bank Employees Association, Chennai (hereinafter refers to as Petitioner) are briefly as follows :—

The Petitioner Association has raised this industrial dispute regarding the non-employment of Sri B. Neelakandan, temporary sub-staff who had worked at Latice Bridge Road branch. The concerned workman, Sri B. Neelakandan was originally engaged by erstwhile Bank of Thanjavur Ltd. from 24-7-86. He had worked in International Division, Madras Regional Office, Madras Egmore, Nandanam Abhiramapuram, T.Nagar, Kodambakkam branches continuously. The Bank of Thanjavur Ltd. was amalgamated with Indian Bank w.e.f. 20-02-90. Subsequently the concerned workman Sri B. Neelakandan was engaged by the Latice Bridge Road branch of Indian Bank from 15.10.90. He had completed more than 240 days in the years 1992, 1993, 1994, 1995 and 1996 upto his date of non-engagement from March, 1997. He had also completed 480 days of service within a continuous period of 24 calendar months. Therefore, the Petitioner/Union representing the workman represented the Respondent/ Management to reinstate him and regularise his service. The effort taken by the union ends in failure. Therefore, the Petitioner/Union representing the concerned workman Sri B. Neelakandan raised an industrial dispute before the Assistant Labour Commissioner (Central) Chennai under Industrial Disputes Act, 1947. But the conciliation failed and the Assistant Labour Commissioner (Central) Chennai had sent a failure report to the Govt. The Govt. referred the dispute to this Hon'ble Court to adjudicate on the issue. The concerned workman Sri B. Neelakandan studied up to SSLC and he was in continuous employment for more than 480 days. It proves that there was perennial need for the employment of the workman under Respondent/ Management. Though the employment of the workman is said to be a temporary one, in reality it is not so. He had been temporarily engaged in a permanent vacancy. Yet the Respondent/Management had not taken any action to regularise the service of the workman or to grant him temporary status and to absorb him in a permanent vacancy that may arise in future. It is an unfair labour practice followed by the Respondent taking advantage of their poverty and after extracting work from him, he was just thrown out of his employment. The bankmen of this country are covered by Bipartite Settlement and awards. The Bipartite Settlement dated 19-10-1966 defined temporary employees in Chapter XX (III) Clause 20.7, 20.8 and 20.12. Though it is said to be temporary appointment on daily wages as and when required, continuous engagement of the workman amply proves the perennial need of the workman, the bank shall be given preference for appointment as a sub-staff. Therefore, due to the exigencies of service, the Branch Manager Latice Bridge Road branch engaged the concerned workman Sri B. Neelakandan for more than 480 days. As per clause 20.12 the temporary workman will be given preference while filling up permanent vacancy. Since, it comes under class IV category, Employment Exchange Compulsory Notification Act will not be applicable to the workman. Since the concerned workman was engaged by the Branch Manager as per clause 20.12 of the Bipartite Settlement in the permanent vacancies for more than 480 days Sri B.Neelakandan having preferential treatment and is having a vested right over the existing vacancies under the Respondent/Management. There are so many settlements in the matter of engagement and regularisation of service of such temporary workman. There are several vacancies to absorb the workman into service, but the management is refusing to regularise the services of the workman Sri B. Neelakandan. In view of the facts and circumstances explained above, the Petitioner/ Union prays that this Honble Court may be pleased to direct the Respondent to reinstate the workman Sri B.Neelakandan into service with back wages and all other attendant monetary and service benefits.

3. The averments in the Counter Statement filed by the II Party/Management Indian Bank (hereinafter refers to as Respondent) are briefly as follows :—

The averment of the Petitioner that the concerned workman Sri B.Neelakandan was engaged as temporary sub-staff in the branches of the Respondent/Bank is denied. His engagement was on leave vacancy of the permanent sub-staff and engaged intermittently on casual basis. The Petitioner/Union though styled his engagement as temporary, he was working only on casual basis. The Respondent/Bank has been having a system of maintaining a panel of temporary sub-staff to work in the leave vacancies when permanent sub-staff goes on leave in the branches under the control of zonal offices. The engagement of empanelled sub-staff has been on day-to-day basis and as such these casual employees are paid daily wages. Sri B.Neelakandan was never in the panel and his engagement was unauthorisedly done at the branch level without the knowledge of the higher officers. The erstwhile Bank of Thanjavur Ltd. got amalgamated with the Respondent Indian Bank on 20-2-90. Those who had been appointed into the services of the Bank of Thanjavur Ltd. were absorbed into the services of Indian Bank. Sri B. Neelakandan was not appointed by Bank of Thanjavur Ltd. and hence he was not absorbed into the services of Indian Bank on 20-02-90. As early as on 30-9-78 the Ministry of Finance, Department of Economic Affairs under whose control the Respondent/Bank is functioning directed that no person could be engaged irrespective of the capacity either permanent or temporary without being duly sponsored by Employment Exchange. The Respondent/ Bank as early as in 1983 has set out norms for engaging temporary sub-staff in the leave vacancies through the maintenance of panel. For the empanelment of temporary sub-staff the candidate sponsored by the Employment Exchange fulfilling the criteria to qualification minimum being a pass V standard and maximum being a pass in VII standard, age as per norms etc. are interviewed and selected by the Regional Manager as per the norms given by Ministry of Finance. Only after getting approval of the

Zonal Manager, competent authority the selected candidates are empanelled. Sri B. Neelakandan is not eligible for appointment as he is over qualified and he was not selected as per the norms/procedure of the bank and he was never in the panel. The engagement of Sri B. Neelakandan was itself unauthorised and his engagement was unauthorisedly done at the branch level without the approval and sanction of higher authorities. Being a casual employee engaged on day to day basis, the allegation that he had worked for more than 240 days has no relevance and the same does not confer any right on him to claim regularisation or absorption into services of the bank. Therefore, the allegations in the Claim Statement are not correct and hence denied. The provisions of Bipartite Settlement referred to in the Claim Statement has no application to the case of Sri B. Neelakandan. These clauses apply only to such of those persons who have been selected as temporary sub-staff in the panel made by the bank in accordance with the rules of the bank. Therefore, question of giving preference to Sri B.Neelakandan in the matter of filling permanent vacancies, if any does not arise. Sri B.Neelakandan is neither in the panel of temporary sub-staff nor has been sponsored by the Employment Exchange. He is over qualified for the post of sub-staff. Therefore, the question of other things being equal provided under para 20.12 of the Bipartite Settlement does not arise. The engagement itself is not in accordance with para 20.12 of the Bipartite Settlement. For invoking the said clause he should have been in the panel of temporary sub-staff after observing due selection process. In the absence of this, the allegations in the Claim Statement are without substance. The mere fact that he was engaged purely on casual basis does not mean the vacancy, if any has to be filled in by absorbing him. The Respondent/Bank is a Government of India undertaking and is bound by guidelines and policies issued by Government of India from time to time. All the policies regarding recruitment and placement of personnel are based on the guidelines and policies of the Government of India and also the settlements entered with the recognised union. The settlements entered earlier cannot be cited in this case the circumstances are different. The Respondent/Bank being wholly owned by the Government of India is bound to follow the directives/ guidelines in the matter of empanelment of temporary sub-staff. Immediately after the nationalisation of banks, it was found that there were casual engagements of sub-staff in leave vacancies. The Government of India insisted for putting an end to these types of back door entry in the public services. The Government of India periodically issued directives that selection should be through Employment Exchange only. When the banks contemplated to follow the directives of Government of India the recognised employees union requested the Respondent/ Management to consider the cases of persons who were engaged on casual basis without sponsorship through Employment Exchange for a considerable length of period though intermittently. The Government of India on 16-8-90 imposed restrictions on fresh empanelment till such time the problem of existing temporary sub-staff are solved and enclosed an approach paper to sort out the issue of existing temporary employees. As a matter of fact, under a settlement dated 6-7-1992 as a one time measure cases of persons worked for 90 days or more between 1-1-82 and 31-12-89 without being sponsored by Employment Exchange was considered by the Bank for empanelment as temporary sub-staff if they are otherwise eligible for appointment in the post of sub-staff subject to the approval by the Director General of Employment And Training. This was based on the Govt. letter dated 16-8-90 wherein the Government of India made it clear that it was a one time measure and there should not be any addition in the existing panel of temporary sub-staff. The person concerned in the dispute Sri B. Neelakandan does not come under this category of one time measure candidates as he was not eligible for empanelment/appointment in view of his higher qualification and the fact that he was not engaged during the relevant period and he had not worked in the Respondent/Bank in the relevant period. Therefore, subsequent to the aforesaid settlement, the bank has been following only the directives and guidelines issued by the Government of India from time to time. Therefore, the Petitioner Association's case is misconceived and untenable since the settlement was entered into for a specific purpose and for a specific period of time as a one time measure. Further, the Reserve Bank of India by its letter dated 12-8-96 instructed the Respondent/Bank not to resort to fresh appointment in all cadres and in view of the ban imposed by the Reserve Bank of India, the Respondent/Bank is not in a position to recruit any fresh employee. Being a casual engagement Sri B. Neelakandan does not come under any of the clauses of Bipartite Settlement. As per the decision of the Supreme Court admittedly, he was not appointed in the post in accordance with rules and engaged on the basis of need of work. He was a temporary employee working on daily wages. Under these circumstances, his disengagement from service cannot be construed to be retrenchment under the Industrial Disputes Act. The concept of retrenchment therefore, cannot be stretched to such an extent to cover the concerned workman since he is only daily wage employee and has no right to the post. his disengagement is not arbitrary. For the reasons stated above, the concerned workman Sri B. Neelakandan is not entitled to stake claim for regularisation and absorption as sub-staff and his non-utilisation is legal and valid. Hence, it is prayed that this Hon'ble Court may be pleased to reject the reference by dismissing the claim of the Petitioner Association.

4. When the matter was taken up for enquiry finally, no one has been examined on either side as a witness, No document has been marked as an exhibit on the side of the I Party/Claimant. Five documents filed on the side of the

II Party/Management were marked by consent as EX.M 1 to M5. Learned counsel for the II Party/Management alone has advanced his arguments.

5. The Point for my consideration is -

"Whether the termination of Sri B. Neelakandan, sub-staff by the management of Indian Bank is justified? If not, what relief is he entitled to?"

Point: —

This industrial dispute has been raised by the I Party/ Indian Bank Employees Association, Chennai espousing the cause of the workman Sri B. Neelakandan temporary sub-staff, who had worked at Latice Bridge Road branch of the Respondent/Indian Bank. According to the Petitioner Union the concerned workman Sri B. Neelakandan was originally engaged by erstwhile Bank of Thanjavur Ltd. from 24-7-96. The Bank of Thanjavur Ltd. merged with Indian Bank on 20-02-90. It is the contention of the I Party/Union that the concerned workman was engaged by the Latice Bridge Road of Indian Bank from 15-10-90 and he had completed more than 240 days in the years 1992, 1993, 1994, 1995, 1996 and up to his date of non-engagement from March 1997. It is also the contention of the Petitioner Union that though it is said to be temporary appointment on daily wages as and when required, the continuous engagement of the workman amply proves that perennial need of the workman for the bank work, hence the concerned workman shall be given preference for appointment as sub-staff and that there were several vacancies to absorb the workman into service but the management is refusing to regularise the services of the workman Sri B.Neelakandan. It is the further allegation of Petitioner Association in the Claim Statement that the concerned workman Sri B. Neelakandan had completed 480 days of service within a continuous period of 24 calendar months and that the concerned workman had been temporarily engaged in a permanent vacancy but in the Counter Statement it is the contention of the Respondent/Bank that the concerned workman Sri B. Neelakandan was engaged on leave vacancy of the permanent sub-staff and was engaged intermittently on casual basis. In the Counter Statement the Respondent/ Bank has specifically denied the averment in the Claim Statement that the concerned workman has been engaged by the Respondent/Bank continuously and the Petitioner Union is to prove strictly the averments of the Claimant Union in respect of the concerned workman's continuous engagement as temporary sub-staff in the branches of the Respondent/Bank. No one has been examined on either side as a witness. Neither the concerned workman nor any person representing the Union has deposed before this Tribunal as a witness in respect of the averments about the continuous engagement of the concerned workman in the Respondent/Bank for the periods mentioned in the Claim Statement. No document to that effect has been filed by the Petitioner Association in this case as an exhibit on their side. On the other hand, the Respondent/Bank Management has filed five documents as Ex.M1 to M5. It is a specific plea in the Counter Statement of the Respondent/ Bank that those who had been appointed into the services of the Bank of Thanjavur Ltd. were absorbed into the services of Indian Bank when the erstwhile Bank of Thanjavur Ltd. got amalgamated with the Respondent Indian Bank on 20-2-90 and that Sri B.Neelakandan was not appointed by Bank of Thanjavur Ltd. and hence he was not absorbed into the services of the Indian Bank on 20-02-90. This specific plea of the Respondent/Bank in their Counter Statement has not been denied by the Petitioner Union. From this, it is seen that the concerned workman Sri B.Neelakandan was not appointed by Bank of Thanjavur Ltd. as a permanent sub-staff of that bank. It is also contended in the Counter Statement that the concerned workman Sri B.Neelakandan was working only on casual basis and that the Respondent/Bank has been having a system of maintaining a panel of temporary sub-staff to work in the vacancies when permanent sub-staff goes on leave in branches under the control of zonal offices and that the engagement of empanelled sub-staff has been on day to day basis and as such these casual employees are paid daily wages. It is further contended that Sri B.Neelakandan was never in the panel and his engagement was unauthorisedly done at the branch level without the knowledge of the higher offices and that Sri B. Neelakandan is not eligible for appointment as he is over qualified and he was not selected as per the norms/procedure of the bank and he was never in the panel and his engagement done at the branch level unauthorisedly without the approval and sanction of higher authorities. All these specific pleas mentioned in the Counter Statement of the Respondent/Bank have not been denied as incorrect by the Petitioner Association. The Respondent/Indian Bank Management, Personnel Department at the Head Office, Madras sent a circular dated 4-3-83 to all the branches mentioning the norms relating to engagement of persons during the leave vacancies as sub-staff. The xerox copy of that circular is Ex. M2. In that the minimum qualification for engaging a sub-staff in the leave vacancy has been mentioned as pass in V Standard and maximum qualification as pass in VII Standard. As per this norms, the Petitioner's maximum educational qualification must be pass in VII Standard. But in the Claim Statement itself, the Petitioner has stated that he has studied up to SSLC. It is the contention of the Respondent/Management that for being employed as a sub-staff the maximum qualification as per the norms of the Respondent/Bank is VII Standard and since the Petitioner has studied up to SSLC, he is ineligible for being considered to be engaged as a sub-staff even on casual basis. The learned counsel for the Respondent Management had argued that even the provisions Bipartite Settlement do not attract this Petitioner, since the Petitioner is not in the panel of temporary sub-staff. As per that settlement, the persons who were engaged without

being sponsored by Employment Exchange and worked for 90 days or more during the period 1-1-82 to 31-12-89 as a one time measure and if the persons are found suitable for selection, they may be taken back in the panel for being engaged in the leave vacancies of sub-staff, subject to necessary approval being obtained from Director General of Employment & Training. As per this terms in the settlement, the Petitioner must be found suitable for selection for empanelment of temporary sub-staff. As stated earlier, his educational qualification is more than the maximum prescribed for the sub-staff. By engaging over-qualified like the concerned workman for the temporary sub-staff post, the benefits available to the persons who have educational qualification from V standard to VII standard have been deprived. So from all these things, it is seen that the engagement of the concerned workman even on casual basis at branches of the Respondent/ Bank from 1992 to 1997 is only an unauthorised one. On that basis, the concerned workman cannot claim it as a right to be absorbed in the vacancy of a permanent sub-staff in the Respondent/Bank. Further, as it is stated in the Counter Statement of the Respondent/Management, the provisions of Bipartite Settlement referred to in the Claim Statement of the Petitioner Union has no application to the case of the concerned workman and those clauses apply only to such of those persons who have been engaged as temporary sub-staff from the panel made by the bank in accordance with settlement entered into by the banks with the recognised unions and with candidates sponsored by Employment Exchange. As it is rightly contended by the Respondent/Management, the question of giving preference to the concerned workman in the matter of filling permanent vacancy, if any, does not arise. The concerned workman does not come under the category of persons mentioned in Ex.M4 settlement dated 6-7-92, which is meant for 'one time measure' for the persons mentioned in the terms of that Settlement because the concerned workman was engaged from 1992 in the Indian Bank. It is the definite contention of the Respondent/Bank that subsequent to that settlement, the bank has been following only the directives and guidelines issued by the Government of India from time to time. In support of the same, the xerox copy of the Government of India Notifications and circulars issued by the bank have been filed as exhibits on the side of the management. They are Ex.M1 to M3. So, from this it is seen that the concerned workman was neither in the temporary sub-staff panel nor sponsored by Employment Exchange. Therefore, the question of giving preference while filling permanent vacancies provided under para 20.12 of Bipartite Settlement does not arise. Hence for providing employment to the concerned workman by giving preference to him does not arise. For invoking the said clause of the Bipartite Settlement, the concerned workman should have been in the temporary panel of sub-staff or he should have been brought into the panel through Employment Exchange. Since he has not come under that category, the claim of the Petitioner on behalf of the concerned workman in pursuance of the provisions under para 20.12 of Bipartite Settlement cannot be taken as correct. As it is contended by the Respondent/Bank, since the concerned workman has been engaged on a casual basis, that too on day-to-day basis, the allegation in the Claim Statement that the concerned workman had worked for 240 days in a year and also 480 days within a period of 24 months does not confer the concerned workman any right to claim regularisation or absorption into the services of the bank. Even according to the averments in the Claim Statement, the concerned workman has not made any claim for absorption during the period between 1992 to 1997. As it is seen from the available materials, the concerned workman was never appointed by the erstwhile Bank of Thanjavur Ltd. to any particular post of sub-staff and even after the merger of erstwhile Bank of Thanjavur Ltd. with Indian Bank the concerned workman was engaged in 1992 on casual basis that too intermittently. So under such circumstances, the question of invoking Section 25F of the Industrial Disputes Act, 1947 does not arise. So, there is no question of abrupt stoppage of the concerned workman from March, 1997 without any notice and without following the procedure under section 25F of the Industrial Disputes Act, 1947 by the Respondent/Bank. It is not disputed that the Respondent/Bank is a public sector bank and it is bound to adhere to the guidelines issued by the Government of India in regard to the engagement of temporary sub-staff. Admittedly, the concerned workman has not been engaged by the Respondent/Bank as per their recruitment rules and he had not undergone any selection process as per Banking Service Rules. It is specifically stated in the Counter Statement of the Respondent/Bank that it has been having a system of maintaining a panel of temporary sub-staff to work in the vacancies of permanent sub-staff going on leave in branches attached to the Zonal Office and that the engagement of empanelled sub-staff has been on day-to-day basis and as such casual employees are paid daily wages and that such engagement on day-to-day basis comes to end at the close of the day and that the concerned workman was never in the panel of temporary sub-staff. All these specific averments in the Counter Statement of the Respondent has not been denied as incorrect. It is also not disputed that the ban on recruiting sub-staff is still in force. It is observed by the Hon'ble Supreme Court of India in a case reported as 1992 2 LLJ SC pg. 452 DELHI DEVELOPMENT HORTICULTURE EMPLOYEES' UNION Vs. DELHI ADMINISTRATION DELHI & OTHERS that *"we may take note of the pernicious consequences to which the direction for regularisation of the workman on the only ground that they have put in work for 240 or more days has been leading. Although, there is Employment Exchange Act which required recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the*

Employment Exchange and the persons registered in the Employment Exchanges and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long awaiting list in the employment register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules and is continued for 240 or more days with a view to give benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment marked has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back door entries in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why, most of the cases which come to the Court are of employment in Govt. departments, public undertakings or agencies." This observation of the Supreme Court in the above mentioned case is squarely applicable to the facts of this case. It is held by the Calcutta High Court in a case reported as 1999 II LLJ 1173 CALCUTTA TRAMWAYS COMPANY 1978 AND OTHERS Vs. RAMESH AND 17 OTHERS *"that an appointment to a permanent service must be made in terms of recruitment rules for the said purpose, there must exist a vacancy. The person appointed through backdoor i.e. not in conformity with the rules could not claim permanency in service. Absorption in permanent service on the ground of social justice is not sustainable."* This decision of the Calcutta High Court in the above cited case also is squarely applicable to the present case. In the present case also, the concerned workman who has not been appointed to a permanent service in terms of recruitment rules. So in view of the engagement of the concerned workman as casual employee in the Respondent/Bank on daily wage basis for number of days cannot confer on him any right to claim absorption as a permanent sub-staff of the Respondent/Bank. Hence, under such circumstances, the Petitioner Union cannot claim for an employment for the concerned workman as sub-staff in a permanent vacancy or as a permanent sub-staff in the Respondent/Bank. Hence, the action of the management of Indian Bank in denying employment to Sri B.Neelakandan the concerned workman is legal and justified. The concerned workman having not engaged as per the norms for recruitment of sub-staff in the Respondent/Bank and his engagement as casual sub-staff on day to day basis was only an unauthorised one. There is no question of termination of the services of Sri B.Neelakandan as sub-staff by the management of Indian Bank. Hence, the concerned workman is not entitled for any relief. Thus, the point is answered accordingly.

6. In the result, an Award is passed holding that the concerned workman Sri B. Neelakandan is not entitled to any relif. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :
On either side : None

Documents Exhibited :
For the I Party/Claimant : Nil

For the II Party/Management :

Ex.No.	Date	Description
M1	30-09-78	Xerox copy of the instructions issued by Government of India to all banks.
M2	04-03-83	Xerox copy of the circular issued by Head Office of Indian Bank with regard to norms for engagement of Sub-staff.
M3	16-08-90	Xerox copy of the instructions issued by Government of India, Ministry of Finance to all Chief Executives of Banks Regarding recruitment and absorption of temporary Employees in PSU.
M4	06-07-92	Xerox copy of the settlement entered by the Indian Bank with the recognised Union.
M5	26-06-96	Xerox copy of the letter issued by Reserve Bank of India To Chairman, Indian Bank.

नई दिल्ली, 7 जनवरी, 2003

का. आ. 395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 30/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-1-2003 को प्राप्त हुआ था।

[सं. एल-12012/10/99-आई.आर. (बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 395.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2002)

of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation the management of Bank of Baroda and their workman, which was received by the Central Government on 1-1-2003.

[No. L-12012/10/99-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 27th November, 2002

Present :

K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE NO.30/2000

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act/1947 (14 of 1947), between the Workman Sri M.Raju and the Management of Bank of Baroda, Chennai.]

BETWEEN

The Secretary, All Indian Bank Baroda Employees Federation,	: I Party/Claimant

AND

The Assistant General Manager (P.N.I) Bank of Baroda Chennai.	: II Party Management Bank of Baroda.

APPEARANCE :

For the Claimant :	M/s.Ayar & Dolia & C. R. Chandrasekaran, Advocates
For the Management :	M/s.K.S V. Prasad & Advocates.

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the following industrial dispute for adjudication vide Order No.L-12012/10/99/IR(B-II) dated 17-7-2000)

> "Whether the action of the management of Bank of Baroda in discriminating/denying absorption and other benefits to Sri M. Raju employed as a driver through the Executive of the bank is legal and justified? If not, what relief is the disputant concerned entitled to?"

ORDER

On receipt of the order of reference from the Government of India, Ministry of Labour, this case has been taken on file as I.D No. 30/2000 and notices were sent to the parties to the dispute by registered post, with a direction to appear before this Tribunal on 10-8-2000 to file their respective Claim Statement and Counter Statement and to prosecute this case further. Accordingly, learned counsel on record on either side have filed their respective claim statement and counter statement, additional Claim Statement and additional Counter Statement.

2. This industrial dispute has been raised by the Secretary, All India Bank of Baroda Employee, Federation, Chennai espousing the cause of the workman Sri M. Raju employed as a Driver through the Executive of Bank of Baroda/ II Party/ Management. This dispute has been raised by the Union on behalf of the concerned workman challenging the action of the management of Bank of Baroda in denying absorption of the concerned workman in service and other benefits to him. The Claimant Union has made a demand in the Claim Statement that the II Party/ Bank Management should absorb the concerned workman Sri M. Raju in service as a Driver in the regular rolls of the bank in subordinate cadre with requisite allowance payable to drivers with retrospective effect from the date of his appointment on 5-4-1994. It is further alleged in the Claim Statement that the appointment of the concerned workman Sri M.Raju though oral in nature, he was engaged by the bank as a driver for the vehicle of the bank and not owned by the manager of the branch and the wages have been paid to him only by the bank and that the said Raju was paid wages as a consolidated sum debited to the bank's account and that the action of the management of Bank of Baroda in discriminating/denial absorption and other benefits to Sri M. Raju employed a driver through the executive of the bank is neither legal or justified and hence his services have to be regularised from the date of his appointment on 5-4-1995 as a permanent workman with all attendant benefits.

3. The II Party/ Management filed counter disputing the averments in the Claim Statement filed by the I Party/ Claimant Union and has alleged in the Counter Statement that the Chief Manager has power/ authority to appoint a driver for and on behalf of the Respondent/ Bank and hence the engagement of the service of the concerned workman Mr. Raju was purely personal and such individual action of an executive of the bank without entitlement/authority is not binding on the bank and that the non-absorption of Sri M. Raju as regular driver is valid and not discriminatory.

4. Then the Petitioner Union had filed additional claim Statement alleging that the concerned workman Sri M. Raju is a member of the Union since 5-4-1995 and on the basis of the resolution passed by the Bank of Baroda Union, the Claimant Federation has taken up the cause for the concerned workman Mr. M. Raju for regularisation of service in the Respondent/Bank. Then the Respondent/

Management has filed an additional counter Statement alleging that the averments in the additional claim Statement are an afterthought and this Tribunal may be pleased to reject the claim of the Petitioner.

5. When the matter was taken up for enquiry, no one was examined as a witness on either side and no document has been marked on the side of the I Party/ Claimant. On the side of the II Party/Management eight documents were marked by consent as Ex. M1 to M8.

6. When the matter was pending enquiry before this Tribunal, the I Party/Claimant has come forward with a petition under section 11(3) of the Industrial Disputes Act, 1947 with a prayer requesting this Tribunal to instruct the Respondent/Bank to produce sixteen documents listed in the annexure to the petition. The Respondent/Management has filed a counter in that petition stating that the Petitioner's prayer for production of document by the Respondent/management as necessary for adjudication for the issue is baseless which may not be allowed. After contest, the petition was dismissed by this Tribunal as I.A No. 27A/2000. Against that order of dismissal of that I.A the Petitioner Union have preferred a Writ Petition before the Hon'ble High Court of Madras in W.P. No. 3261/2001. Subsequently, that writ petition was dismissed by the Hon'ble High Court of Madras on the basis of the memo filed by the Petitioner Union therein to withdraw that Writ Petition.

7. In pursuant to the dismissal of the Writ Petition filed by the I Party/Claimant, the Bank of Baroda Employees Federation has come forward with the petition I.A.No.112/ 2002 for withdrawal of the dispute stating that the concerned workman has presently requested the I Party/ Claimant by his letter date 05-09-2002 not to pursue the above dispute, as he is not interested in prosecuting the same. Enclosing the copy of the letter to the petition, the I Party/Claimant has prayed that this Hon'ble Tribunal may be pleased to permit the Claimant Union to withdraw the dispute and pass an order that the claimant Union has withdrawn the dispute.

8. After hearing the counsel for the I Party/Union, who filed this petition I.A.No.112/2002 for withdrawal of the dispute and after perusal of the entire records and copy of the letter of the concerned workman Sri M. Raju enclosed along with the petition, the request made by the I Party/ Claimant to permit the Claimant Union to withdraw the dispute has been granted by allowing this petition.

9. In view of the order passed in the above I.A.No.112/2002, this reference is closed as withdrawn by the I Party/ Claimant Union. No. Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day 27th November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Marked :—

For the I Party/Claimant : Nil

For the II Party/Management :—

Ex. No.	Date	Description
M1	Nil	Xerox copy of the recruitment rules for the post of Driver From Book of Instruction of Bank of Baroda Vol. 12
M2	Nil	Xerox copy of the scheme relating to Scheme for Allotment of Bank's car to officers/executives.
M3	20-11-78	Xerox copy of the circular issued by Central Recruitment Department of Respondent/Bank.
M4	11-10-96	Xerox copy of the letter of Petitioner Union to Assistant Labour Commissioner (Central)
M5	12-11-97	Xerox copy of the Counter Statement filed by the Respondent/Bank before Assistant Labour Commissioner
M6	01-06-98	Xerox copy of the rejoinder filed by the Petitioner Union before Assistant Labour Commissioner (Central)
M7	04-05/6-90	Xerox copy of the reply to rejoinder filed by the Respondent/Bank
M8	24-12-98	Xerox copy of the report of failure of conciliation Submitted by Assistant Labour commissioner (Central)

नई दिल्ली, 7 जनवरी, 2003

का. आ. 396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट (संदर्भ संख्या 37/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-2003 को प्राप्त हुआ था।

[सं. एल-12012/12/2001-आई.आर. (बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 396.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/2001) of the Central Government Industrial Tribunal-cum-LC, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 7-1-2003.

[No. L-12012/12/2001-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Case No. CGIT 37/2001

Reference No. L-12012/12/2001 IR (B-II)

Sh. Pawan Kumar, S/o Sh. Sitaram,
R/o 84-A, Ashok Nagar,
Sri Ganganagar-335001. .....Applicant

VERSUS

The Regional Manager,
Bank of Baroda,
First Polo, Paota,
Jodhpur-342001. ..... Non-applicant

PRESENT:

Presiding Officer:	**Sh. R. C. Sharma**
For the applicant:	None.
For the non-applicant :	Sh. Shayam Vyas
Date of Award :	13-12-2002.

AWARD

1. The Central Government in exercise of the powers conferred by clause D of Sub-section 1 and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (in short, the Act) has referred this industrial dispute to this Tribunal for adjudication which runs as under:—

> "Whether the claim of Sh. Pawan Kumar S/o Sh. Sitaram that he was engaged by the Management of Bank of Baroda to perform the duties of Sub-staff on daily wages during the period from 6-7-1985 to 11-6-1992 is correct? Whether the disputant was engaged on fictitious names and various fictitious accounts were operated facilitating payment of wages for the service rendered by him during the above period? Whether the action of the management in terminating the services of Sh. Pawan Kumar w.e.f. 11-6-1992 was justified? If not, what relief the workman is entitled and what directions are necessary in the matter?"

2. The workman Sh. Pawan Kumar in his statement of claim has averred that he was appointed on 6-7-1985 to the post of the 4th Class by the non-applicant management, who worked continuously up to 11-6-1992. In total, he worked more than 240 days but the non-applicants without issuing any notice to him, orally terminated his service w.e.f. 11-6-92 in violation of the provisions under Sections 25-F, 25-G and 25-H of the Act. He has prayed that the termination order dated 11-6-92 may be declared unjust and illegal and he be reinstated with continuity in services and with back wages from the date of his termination.

3. Contesting the claim submitted by the workman, the non-applicants in their written statement has declined the employment of the workman to the post of the 4th Class and have pleaded that from 2-7-85 to 17-9-85 i.e. 78 days and from 19-10-87 to 31-10-87 i.e. 13 days, in total 91 days the workman had worked with them on the causal basis. In their additional pleadings, they have stated that in order to regularize the temporary employees working in the non-applicant establishment, they had invited the applications through the advertisements of those employees who had worked in the establishment since 1-1-82 to 31-12-90 on the casual basis and that the eligible persons had to be appointed. The workman had worked in the non-applicant establishment only for a period of 91 days, for which the due payment was made to him.

4. The workman has filed his affidavit, whereas the non-applicants have filed the counter-affidavits of Sh. N.K. Kalani, Sr. Manager, and Sh. M. C. Mittal, LDC/Cashier of the non-applicant establishment.

5. Both the parties have also produced the documentary evidence on the record.

6. None was present on behalf of the workman at the time of the final argument in the dispute.

7. I have heard the ld. representative for the non-applicants and have gone though the record.

8. The ld. representative for the non-applicants has submitted that as per the application placed by the workman before the management, it is well-proved that he had worked only 91 days and his version that he had worked for more than 240 days has not been proved. According to him, his claim is liable to be rejected.

9. I have considered the submissions advanced by the ld. representative for the non-applicants.

10. Now, the points for consideration are, whether the workman was appointed to the post of the 4th Class by the non-applicant establishment, whether he worked for more than 240 days and whether he was engaged on fictitious names and various fictitious accounts were operated facilitating the payment of wages for the service rendered by him during his employment period.

11. So far as the appointment to the post of 4th Class is concerned, the workman has not produced any document to substantiate his submission, which could show that he was appointed by the non-applicant establishment to any such post. Furthermore, he has admitted in his cross-examination that no appointment letter was issued to him.

12. It is the stand adopted by the workman that he worked for more than 240 days from 6-7-85 to 11-6-92. He could not be able to adduce any documentary evidence to prove his assertion. The workman in his cross-examination has admitted that the application Ex. W-3 bears his signature. The contents of this document show that an application was moved by the workman to the Branch Manager that he has worked for 91 days in their establishment and that as per the circular issued by the bank, he seeks the appointment on the ground that he has completed 91 days in the non-applicant establishment. It is a version made by the applicant and even admitted by him that this application bears his signature. This is a hand-written application presented by the applicant. In addition to it, the non-applicants have produced the vouchers Ex.

M-1 to M-6 through which the payment was made to the workman for the number of days that he had worked in the non-applicant establishment. I have perused them carefully and the number of days stated therein cannot be counted to the extent of 240 days. Therefore, on the basis of the analysis of the oral and documentary evidence adduced by both the parties, it is not proved that the workman had worked for 240 days, rather it is an admission on the part of the workman that he had worked only for 91 days in the non-applicant bank.

13. Now remains the question as to whether the disputant was engaged on fictitious names and the payment of wages was made to him operating the fictitious accounts.

14. Under para 3 of his affidavit, the workman has deposed that he had worked continuously during the period commencing from 6-7-85 to 11-6-92 and on various occasions. under the fictitious names the work was taken from him. In this context, he has only disclosed the fictitious name as one of 'Mr. Kamalkant'. This fact has been denied by Sh. M. C. Mittal, the then LDC/Cashier in the non-applicant bank. In his cross-examination, he has categorically denied this fact. Thus, this fact has also not been proved on the record that the workman was paid under fictitious names for the work taken by the non-applicant establishment.

15. On account of the foregoing reasons, the claim submitted by the workman does not deserve to be maintained and the same is disallowed. The reference is answered accordingly.

16. Let a copy of the award may be sent to the Central Government for publication under rule 17(1) of the Act.

R. C. SHARMA, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 103/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-1-2003 को प्राप्त हुआ था।

[सं. एल-12012/81/90-आई०आर० (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 103/90) of the Central Government Industrial Tribunal-cum-Labour-Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Punjab National Bank and their workman, which was received by the Central Government on 1-1-2003.

[No. L-12012/81/90-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

PRESIDING OFFICER SHRI S.M. GOEL

Case No. ID 103/90

Sh. Gurdial Singh c/o Sh. Tek Chand Sharma
25, Sant Nagar, Civil Lines, Ludhiana ...Applicant

V/s

Zonal Manager, Punjab National Bank
Feroze Gandhi Market, Ludhiana .....Respondent.

REPRESENTATIVES

For the workman : Shri Tek Chand Sharma

For the management : Shri Y. S. Chibb

AWARD

(Passed on 20-11-2002)

The Central Govt. Ministry of Labour vide notification No. L-12012/81-90-D-II-A dated 7th August 1990 has referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management of P.N.B. in dismissing Sh. Gurdial Singh, Peon/Dafatary at their Paddi Sura Singh Branch w.e.f. 23-8-88 is legal and justified? If not to what relief the concerned workman is entitled and from what date?"

2. In the claim statement the applicant pleaded that a chargesheet was served upon him alleging misconduct reply to which was not considered by the management. Enquiry Officer was not appointed according to Desai Award. The alleged act of misconduct did not come under Bipartite Settlement, charge sheet was vargue and belated. Enquiry Officer proceeded in arbitrary manner and material evidence was not produced during the enquiry. Finding of the enquiry officer were of perverse. Reply was not considered. Appellate Authority also dismissed the appeal in illegal manner. Enquiry Officer was not appointed in accordance of the provision of law and while awarding punishment the disciplinary authority has not applied its mind. The applicant thus prayed that he be reinstated in service with full back wages, continuity of service and all other consequential benefits.

3. In the written statement it is pleaded by the management that applicant was chargesheeted on 14-7-1987 for misappropriating an amount of Rs. 300/- given to him by Smt. Parkash Kaur for depositing in her account. It is further pleaded that the applicant had borrowed a sum of Rs. 1000/- from Sh. Bachna Ram when the said Bachna Ram had taken the loan from the bank. He has only returned Rs. 300/- and the balance amount is still outstanding. He was issued chargesheet and enquiry was held against him. The applicant fully participated in the enquiry. The enquiry was conducted in a fair manner in accordance with the principle of the natural justice. Show cause notice was

also served. Appellate Authority also dismissed the appeal after considering and after giving personal hearing. The punishment has been awarded rightly and it is pleaded by the management that there was no merit in the reference and the same be rejected.

4. In evidence the applicant filed his own affidavit as Ex. W1 and he also produced documents W2. In cross-examination it is admitted by the workman that during enquiry he had cross examined the witnesses of the bank. In rebuttal the management produced Shri U.K. Walia Manager PNB as MWI who filed his affidavit Ex. M1 and document Ex. M2 to M17 and also Shri V.K. Sehgal who also filed his affidavit Ex. M18 and documents i.e. enquiry proceeding Ex. M 19.

5. I have heard the learned counsels for the parties and have also gone through the evidence and record of the case. The learned counsel for the workman has assailed the entire enquiry proceedings and he has also relied on the following authorities of the Hon'ble Supreme Court and that of the Hon'ble High Courts.

1. 1983(1) S.L.R. page 32, S.D. Bhardwaj versus Union of India & Ors.
2. 1999(1) J.R.L. & S 585 Kuldeep Singh versus The Commissioner of Police.
3. AIR 1962(Pb.) 355 S. D. Sharma Vs. State of Punjab.
4. 1996(4) S.C.T. 226 State of Tamil Nadu Versus Thera. K.V. Perumal.
5. 1998(2) J.R L & S 709 State of UP Versus Shatrughan Lal & Ors.

The learned representative of the management has also relied on the following authorities.

1. 1998 (I.S.J.) Banking 650 S.C.
2. Civil Appeal No. 1377 of 2002, UCO Bank, Chandigarh and others versus Hardev Singh.
3. AIR 1997 S. C. page 2148 Narayan Dattatraya versus State of Maharastra.

The learned counsel for the workman pointed out that notice of the appointment of the Enquiry Officer had not been displayed by the management on the Notice Board and this action of the management had caused great loss in defence to the applicant and this itself is one of the reason to declare the entire enquiry as vitiated. But the learned counsel for the applicant has not pointed out as to in what manner this had caused the applicant any damage in his defence. He has failed to point out that this action of the management has caused any prejudice to the workman in his defence. It is admitted case of the workman that he participated in the enquiry and also led his evidence in defence and no prejudice has been caused to the workman. Thus in my considered opinion no prejudice has been caused to the workman, therefore, this objection of the counsel for the management has no force and the plea of the learned counsel deserve to be rejected.

8. The learned counsel for the applicant has further argued that in the charge sheet the list of witnesses and names have not been given and during the enquiry witnesses have been produced at the sweet will of the management. I have gone through the entire enquiry proceedings and charge sheet also. In the charge sheet itself the names of the complainant have been given who are the main witnesses of the management to prove the charges against the applicant and the witnesses of the management have been cross-examined by the representative of the workman during the enquiry proceedings extensively. The management has not produced any witness during the enquiry which was not mentioned in the charge sheet. It is also pertinent to mention here that the learned counsel has not pointed anything which goes to show that any prejudice has been caused to the applicant during the enquiry proceedings and the applicant's representative cross-examined all the witnesses, thus, to my mind, no prejudice has been caused to the applicant had this plea of the counsel for the workman holds no ground and the same is rejected.

9. The learned counsel for the workman has also argued that in the charge sheet no date and time of the occurance has been mentioned and the charge sheet itself is vague and the entire enquiry proceedings is vitiated on this score alone. I have gone through the charge sheet and other relevant documents relating to the enquiry proceedings with the assistance of the learned representatives of the respective parties, It is admitted fact that in the reply submitted to the charge sheet, the applicant has admitted the facts of the charge sheet. The admission of the defaulting workman are also substantiated by the evidence led by the management before the enquiry officer. Thus, if date and time of the occurrence has not been mentioned in the charge sheet and especially when the defaulting workman admitted the charges, by merely not mentioning the date and time of the occurrence, prejudice has not been caused to the applicant and thus, there is no prejudice caused to the applicant.

10. In view of the above observation in the preceding paras and after going through the entire enquiry proceedings. I find no infirmity in the enquiry proceedings which have been held in accordance with the settled principle of natural justice and in all fairness the applicant has been given full opportunity of defence. Thus, I have no hesitation to hold that enquiry is conducted in fair manner and there is no infirmity in the enquiry proceedings and the applicant is not entitled to any relief and the action of the management in dismissing the applicant Gurdial Singh is perfectly legal and justified. The reference is disposed of accordingly. Central Govt. be informed.

Chandigarh

20-11-2002

S.M. GOEL, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 398.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 133/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-1-03 को प्राप्त हुआ था।

[सं. एल-12012/84/2001-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 398.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 133/2001) of the Central Government Industrial Tribunal-cum-LC, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 1-1-2003.

[No. L-12012/84/2001-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT:

RUDRESH KUMAR, PRESIDING OFFICER

I.D. No: 133/2001

Ref. No. L-12012/84/2001-IR (B-II) Dated 23-8-2001

BETWEEN

Hari Om S/o Shiv Charan Lal, Through Chander Ahuja, C-14, New Agra, Agra (U.P. 282001)

AND

The Branch Manager Syndicate Bank, Ol branch, Mathura-281001

AWARD

By Order No. L-12012/84/2001-IR (B-II) Dated 23-8-2001, the Central Government in the Ministry of Labour, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of section 10 of the I.D. Act, 1947 (14 of 1947) referred this industrial dispute between Hari Om S/o Shiv Charan Lal, Through Chander Ahuja, C-14, New Agra, Agra and the Branch Manager Syndicate Bank, Ole branch, Mathura for adjudication.

The reference under adjudication is as under:

"WHETHER THE ACTION OF THE MANAGEMENT OF SYNIDICATE BANK IN TERMINATING THE SERVICES OF HARI OM W.E.F. 25-9-2000 IS LEGAL AND JUSTIFIED ? IF NOT, WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED TO ?"

2. The case of the workman, Hari Om, is, that he was employed as Attender (Peon) at Ole branch of the Syndicate Bank district Mathura w.e.f. 9-12-91. He was initially paid daily wage @ Rs. 20/- which was revised to Rs. 25/- in the year 1993. He was paid once in a month, or fortnight or week, as per convenience to the bank. His wages were deposited in his bank account number S/B 5050. His services were utilised whole day and he discharged clerical functions as there was shortage of staff. The branch was being extended, but in absence of sanction there was shortage of staff. The regular 'Attender' Shashi Kant was promoted as clerk in the year 1996 and the workman discharged his duties regularly. During his uninterrupted working from 9-12-91 to 23-2-2000, he worked with satisfaction to all. In the year 1999 he requested the Branch Manager to regularise his services but complete indifference was shown on his part. He made an application 11-12-99. No reply was given. He pressed for his regularisation, thereon, the management orally dispensed with his services on 25-9-2000. His representations seeking continuity in service and also, to regularise him were not acceded and so, this industrial dispute was raised. Further the bank did not comply with statutory provisions under section 25-F I.D. Act, rendering his termination *void-ab-initio*.

3. In the written statement, the bank admitted engagement of the workman at Ole branch of the bank to fetch water for the branch as there was scarcity of drinking water. However, it is stated This job was limited to bring water for the branch and for this work he was paid coolie charges @ Rs. 20/- revised to Rs. 25/- per day whenver his services were utilised. This job was totally casual and temporary in nature. There was a contract for service and not contract of service and also, there was no employer employee relationship. He was not entitled to any regular employment.

4. The management has not disputed the association of the workman since 9-12-91 to 25-9-2000. However, it stated that the benefit of section 25-F I.D. Act is not available to him, as such benefit could be given only to one validly appointed in the services of the employer. In para 7 of the written statement, it is stated that Hari Om vide his letter dated 11-12-99, addressed to the Branch Manager stated that he has been working as Attender since 9-12-91 on daily wage of Rs. 20/- his wages was revised to Rs. 25/- since July 1993 and he was not given any appointment order. His request for regularisation was not given any appointment order. His request for regularisation

was not replied by the branch. However, he vide his letter dated 18-1-2000 addressed to the Branch manager requested to consider his letter dated 11-12-99 as cancelled and stated to be ready to work as before.

5. The workman filed a number of cash memos and other documents to prove his regular association and working in the bank. He examined himself as oral evidence. In his testimony he reiterated his version given in the statment of claim. He explained in his cross examination that Shashi Kant was the Attender but he used to discharge work of a clerk as out of 4 clerks only 2 were working. The workman discharged duties of Attender and other work assigned to him. He admitted management's Ex-1 to Ex-3 but denied Ex-2 the letter by which he did not press his claim of regularisation.

6. The bank has not denied that his wages were paid in his account. The mode of payment was monthly, fortnightly or weekly. It has also filed the representations of the workman Ex. I and Ex. II. From these letters filed by the management, it is clear that the workman was regularly working since the year 1991. These letters give inference that the workman was working uninterrupted for about 9 years on daily wages. The management has also submitted details of payments to him. The payments proves that he was paid regularly and had worked more than 240 days in a year during all these years. His oral termination is also not disputed. As such, he was entitled benefit of section 25-F of the I.D. Act, 1947. It is not necessary that the appointment should have been made by competent authority. Admitted and proved facts are that the workman worked since 9-12-91 and had completed 240 days in each year and also in preceding twelve calender months to bring his case within the definition of "continuous service" as defined under section 25-B of the I.D. Act, 1947. The management has not denied that the workman was given any notice or paid retrenchment compensation. Thus, the termination of services of the workman, is *void-ab-initio*.

7. The reference order seeks adjudication on legality of termination which is held illegal. No discussion on regularisation of services is necessary as such adjudication will be beyond the scope of reference. However, it is expected of the bank to give symphathetical consideration to regularise the workman who uninterruptedly worked for nine years.

8. Accordingly, the reference is adjudicated in favour of the workman. He is entitled to reinstatement with full back wages.

Award as above.

LUCKNOW

20-12-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 399.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओरिएण्टल बैंक ऑफ कामर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 21/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-1-03 को प्राप्त हुआ था।

[सं. एल-12012/283/93-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 399.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/94) of the Central Government Industrial Tribunal-cum-LC, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Oriental Bank of Commerce and their workman, which was received by the Central Government on 1-1-2003.

[No. L-12012/283/93-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

PRESIDING OFFICER **SHRI S.M. GOEL**

Case No. I.D. : 21/94

Sh. Kulwant Singh S/o Kartar Singh Village Meeira P.O. Meeira Bairi Tehsil Dehra, District Kangra (H.P.)

....Applicant.

V/s

Deputy General Manager
Oriental Bank of Commerce, Bank Square,
Sector 17-B, Chandigarh. ....Respondent.

REPRESENTATIVE:

For the workmen : Shri D.R. Sharma

For the management : Shri Ram Chander

AWARD

(Passed on 21-11-2002)

The Central Govt. Ministry of Labour vide Notification No. L-12012/283/93-I.R. B. II dated 10th February, 1994 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Oriental Bank of Commerce, Hamirpur in terminating the services of Shri Kulwant Singh, Clerk w.e.f. 19-2-1983 is justified? If not, what relief is Shri Kulwant Singh entitled to?"

2. The applicant filed the claim statement *inter-alia* pleading that he was appointed as clerk, with the management against permanent post and he joined his duty on 16-11-1982 at Branch office Nadaun. He worked up to 18-2-1983 and on 18-2-1983 his services were terminated. He put in 95 days of service with the management. He pleaded that his services were terminated without any charge sheet, enquiry or any notice and in arbitrary manner. It is also pleaded that one Shri Harnam Singh and Miss Neelam Dogra and Jagir Singh were appointed after the termination of the applicant which is unfair labour practice. Thus the management has violated the mandatory provisions of Section 25G and H of the I.D. Act 1947. He has, thus prayed that he be reinstated in service with all consequential benefits and with continuity of service.

3. The management in written statement has taken preliminary objection that the appointment of the workman was of temporary nature and admittedly he has not worked for 240 days of service. It is also pleaded that the claim of the workman is highly belated. On merits it is pleaded by the management that it is permissible to appoint temporary clerks under the Bipartite settlement. It is also pleaded that the appointment of the applicant was for 89 days and his terms come to an end after completion of the above period. It is further pleaded that the appointment of the workman is covered under Section 2(oo)(bb) of the I.D. Act, 1947 and the management has not violated the provisions of Section 25-G and H of the I.D.Act, 1947. It is also pleaded by the bank that regular appointment for the permanent posts of clerk are being made through the Banking Service Recruitment Board. It is thus prayed that the reference of the applicant be rejected.

4. The replication was also filed by the applicant almost reiterating the claim made in the claim statement. It is pleaded that Section 2(oo)(bb) came into existence w.e.f. 18-8-1984 and the provisions of this section does not apply on the case of the applicant.

5. In evidence the applicant filed his own affidavit as Ex. W1. In rebuttal the management filed the affidavit of Shri S.K.Puri as Ex.M1.

6. I have heard the learned counsels for the parties and have gone through the record and evidence of the case. The facts of the case are not deputed. It is admitted case of the parties that the applicant joined the duty of the bank on 16-11-1982 and remained in service up to 18-2-1983. Only question is whether the applicant is entitled for being reinstated in service after putting in 95 days of service. It is argued on behalf of the management that the appointment of the applicant was for specific period and it is squarely covered u/s 2(oo)(bb) of the I.D.Act, 1947. But my mind, this provision is not applicable in the case of the workman as the appointment of the applicant is on 16-11-1982 and this provision is not applicable rertospectively.

7. It is argued on behalf of the workman that the management has violated the provisions of Section 25-G and H of the I.D.Act, 1947 as fresh appointments have been made after his termination. But the workman has not proved through any documents that the persons namely Harnam Singh, Neelam Dogra and Jagir Singh were appointed in the bank. No appointment letter has been produced or proved in this Tribunal to show their nature of employment. It is specifically denied by the management that any person was appointed by the management after the termination of the services of the workman. Thus the management has not violated the provisions of Section 25-G and H of the I.D.Act, 1947. It is argued on behalf of the management that the appointment of the applicant is under the Bipartite Settlement under which for clearing the work, the temporary appointments can be made by the bank. Thus I find no force or merit in the reference and the same is answered against the workman. The reference is disposed off. Central Govt. be informed.

Chandigarh.
21-11-2002

S.M. GOEL, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 400.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल इंश्यूरेन्स कं. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 101/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-1-03 को प्राप्त हुआ था।

[सं. एल-17012/6/91-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 101/91) of the Central Government Industrial Tribunal-cum-LC, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of National Insurance Company Limited and their workman, which was received by the Central Government on 1-1-2003.

[No. L-17012/6/91-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

PRESIDING OFFICER SHRI S.M. GOEL

Case No. I.D. No : 101/91

Smt. Usha Vaidya, C/o Sh. Balbir Singh
National Insurance Company Ltd. Mandi (H.P.)
since died through Shri Chander Sekhar Husband
and Ritika daughter. ....Applicant.

V/s.

Regional Manager,
National Insurance Company Ltd.
S.C.O. 337—39 Sector 35-B, Chandigarh
....Respondent.

REPRESENTATIVE :

For the workman : Shri T. P. Singh

For the management : Shri Pardeep Bedi

AWARD

(Passed on 13th November, 2002)

Central Govt. Ministry of Labour vide Notification L-12012/6/91-I.R. B. 2 dated 25th July, 1991 has referred following dispute to this Tribunal for adjudication :

"Whether the action of the management of National Insurance Company, Mandi (H.P.) in terminating the services of Mrs. Usha Vaidya w.e.f. 21-3-87 is legally valid and justified? If not, then to what relief the workman is entitled to and from which date ?"

2. In the Claim Statement it was pleaded by deceased that she was appointed with the respondent in June 1985 and continued as such upto 20-3-1987. That during the course of employment vide her application dated 2-3-1987 she requested for regularisation of her service but the Management terminated her services w.e.f. 21-3-1987. It was pleaded by the deceased applicant that she was employed on contract basis and the Management has not complied with the principle of last come first go. The Management has also violated the mandatory provision of Section 25-F of the I.D. Act, 1947. It was prayed that she be reinstated in service with full back wages and other attendant benefits including continuity and seniority etc.

3. In written statement it is pleaded by the Management that duties of the applicant were temporary in nature and she has only worked for 228 days during one calendar year. Thus the Management has not violated the provisions of Section 25-F of the I.D. Act. It is further pleaded that the case of the applicant is not covered under Section 25-G and H of the I.D. Act as nature of job was temporary on the basis of no work no pay. Thus the Management prayed for dismissal of the reference.

4. Replication was also filed by the deceased/applicant reiterating the same facts as pleaded in the claim statement.

5. In evidence she had filed her affidavit as W1 and detail of working days Ex. W3 and other documents W2, W4 to W8. She has also examined WW2 Balbir Sharma, who filed his affidavit Ex. W9. Lateron the applicant had expired on 12-11-1993 and her husband Shekhar Vaidya and Ritika her daughter had been substituted as her legal heirs. In rebuttal the Management has filed the affidavit of Ramesh Kaul, As Ex. M1.

6. I have heard the Learned Counsel for the parties and have gone through the evidence and record of the case. The Learned counsel for the applicant has argued that the applicant had completed more than 240 days of service immediately preceding the date of termination i.e. 21-3-1987 as per the details of working days given in Ex. W3 by the applicant had worked for 348 days from 20-3-1986 to 21-3-1987. This position was not disputed by the management by any document like attendance register or payment vouchers. It is verbally pleaded by the management that she had worked only for 228 days. This plea of the management can not be accepted as it is without any document or payment vouchers. The learned counsel for the management has argued that the applicant/deceased was employed on contract basis but no contract or appointment letter was produced by the management to show that the applicant/deceased was employed on contract basis. Thus it is established on the record that at the time of termination of her services by the management, she had already completed more than 240 days of service in one calendar year preceding her termination and it is admitted position in this case, that at the time of termination of her service no retrenchment compensation was offered to her nor any notice or notice pay was given. Thus the management has violated the mandatory provisions of Section 25-F of the I.D. Act 1947 and consequent relief is the reinstatement of the applicant in service. Since the applicant had expired, she can not be reinstated in service. However she is entitled to full back wages for the period from 21-3-1987 to the date of her death i.e. 12-11-1993. Her husband and her daughter who were brought on the file as legal heir of the deceased are entitled to receive the full back wages amount of the deceased applicant. The management is directed to pay the entire amount to the legal heirs within one month from the date of publication of the Award. The reference is disposed off accordingly. Central Govt. be informed.

Chandigarh.
13-11-2002

S.M. GOEL, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 401.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल. आई. सी. ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या 56/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-1-03 को प्राप्त हुआ था।

[सं. एल-17012/1/99-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 401.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 56/2001) of the Central Government Industrial Tribunal-cum-LC, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 2-1-2003.

[No. L-17012/1/99-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT:

Shri S.K. Dhal, OSJS, (Sr. Branch),
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

Tr. Industrial Dispute Case No. 56/2001
Date of conclusion of hearing–9th Dec. 2002

Date of Passing Award–17th Dec. 2002

BETWEEN

The Management of the Branch
Manager, LIC of India, Barbil Branch,
Post Barbil, Keonjhar,
Orissa. ...Ist Party Management

AND

The Workman, Shri Paramananda
Babu Goswami, C/o. Jalaram Stores,
Daily Market, Barbil, At/Po. Barbil,
Keonjhar, Orissa. ...2nd Party-Workman.

Appearances:

Shri S.C. Samantaray, Advocate. ...For the 1st Party-Management.

Shri S. Biswal, Advocate. ...For the 2nd Party Workman.

AWARD

The Govt. of India, in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide their Order No. L-17012/1/99-IR (B-II), dated 06-07-1999:—

"Whether the demand of Shri Paramananda Babu Goswami, C/o. Jalaram Stores, Daily Market, Post Barbil, Dist. Keonjhar for reinstatement and regularization of his service by the Management of L.I.C. of India with back wages taking into account the fact that his services were discontinued with effect from 01-12-1996 is legal and justified? If not, what relief is the disputant entitled to?"

2. The case of the 2nd Party as per his Claim Statement is that, he was engaged by the 1st Party-Management in September 1992 as a Mazdoor/Daily Wage Labourer. He was being utilized for the work of a sub-staff under the 1st Party-Management and he worked continuously without any interruption. He was required to perform the job of Messenger/Peon including all other manual work. He was even asked to perform his job beyond the office hours at the rate of Rs. 25/- per day. Inspite of his sincerity and honesty his services was not regularized. When request was made to the 1st Party-Management, assurance was given to him but all of a sudden on 1-12-1996 he was refused engagement. According to the 2nd Party this refusal of engagement amounts to termination of his service without any notice and so it is illegal. Inspite of his representation when nothing was done he raised a dispute before the Asst. Labour Commissioner (Central). Conciliation proceeding was started but ended in failure. So, the present reference has been made. Prayer has been made for reinstatement with effect from 1-12-1996 and for regularization of his services with full back wages and other consequential benefits.

3. The 1st Party-Management has filed their Written Statement. The 1st Party-Management in their Written Statement has taken the stand that the reference is not maintainable as the provisions of the Industrial Disputes Act 1947 is not attracted to the Life Insurance Corporation of India, since the same has been excluded from their applicability to the employees of the Corporation. As regards the engagement of the 2nd Party it has been stated that his services was being utilized occasionally when the work was available. The claim of the 2nd Party is that he had worked continuously for the whole day has been denied by the 1st Party-Management. According to the 1st Party-Management there is no case for the 2nd Party for regularization of his service and so, he is not entitled for any relief.

4. On the above pleading of the parties, the following Issues have been settled.

ISSUES

1. Whether the reference is maintainable?

2. Whether the demand of the 2nd Party-Workman for reinstatement and regularization of his service by the Management with back wages taking into account the fact that his services were discontinued with effect from 1-12-1996 is legal and justified ?

3. If not, what relief is the disputant entitled to?

5. Both the parties have adduced oral evidence and filed some documents in support of their case.

FINDINGS

ISSUE NO. I

6. It is submitted on behalf of the 1st Party-Management that, it is a body Corporate established under Section 3 of the Life Insurance Corporation Act and under Section 6(1) of the Act, the Life Insurance Corporation is empowered to function on business principle. Under Section 23(1) the Life Insurance Corporation is empowered to employ such number of persons as he deems fit for the purpose of enabling it to discharge its function under the Act. Under Section 48, the Central Government read with Section 49 the Government might make Rules and Regulations for the purpose of the Act, So, the Life Insurance Corporation has framed the LICI (Staff) Regulation 1960, which is statutory in character. According to the 1st Party-Management as per Section 48(2) (cc) reads the provisions of the LIC Act, and Rules shall have effect notwithstanding any thing contained in the Industrial Disputes Act. In the other words the provisions of the Industrial Disputes Act are not applicable to the L.I.C. of India i.e. to the 1st Party-Management. Reliance has been placed in the case of A.V. Nachane and another-Versus-Union of India and another, S. N. Bhowmik and another,-Versus-Union of India and another, S. S. Jain and another,-Versus-Union of India and another, B.S. Dogra and another, -Versus-Union of India and another and T. N. Krishna and another-Versus-Union of India and another reported in AIR 1982 SC 1126 and in the case of M. Venugopal-Versus-Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P. and another reported in (1994) 2 SC Cases 323. On the other hand, the learned Counsel appearing on behalf of the 2nd party placing reliance in the case of Life Insurance Corporation of India-Versus-Presiding Officer Industrial Tribunal, Orissa and Shri Ashok Mishra in O.J.C. 6373 of 1993 disposed of on 16-5-1999 has submitted that the provisions of the Industrial Dispute Act would be applicable to the Life Insurance Corporation. In Orissa Case reference was made to A.V. Nachane and another- Versus-Union of India and another (AIR 1982 SC 1126) in which what has been held by their Lordships of the Supreme Court is that :—

> "In respect of the matter covered by the Rules or Regulations framed under the Life Insurance Corporation Act in respect of its employees the provisions of the Industrial Disputes Act will have no application. But that does not mean that an Industrial Forum will have no jurisdiction to entertain and decide the legality of a dispute relating to the termination of services of an employee."

It was held in Orissa case that an Industrial Dispute Forum has full jurisdiction to go into the question particularly when reference to that effect has been made by the appropriate Government. So, I agree with the learned Counsel appearing on behalf of the 2nd Party that this Tribunal will have jurisdiction to answer the reference made by the appropriate Government. In other words the reference is maintainable. Hence, this Issue is answered accordingly.

ISSUE NO. II

7. The 2nd Party has led evidence to support his case that, he had worked for more than 240 days i.e. more than four years without any interruption. He has placed reliance on Ex-34 and Ext-35, which were the certificates issued by the 1st Party-Management in his favour. It reveals that he had worked for the period from 1992 to 1996. On the other hand, the 1st Party-Management has tried to establish that, the engagement of the 2nd Party was done depending upon the availability of the work. When there was no work he was disengaged. So, according to the 1st Party-Management the refusal of providing work to the 2nd Party or in other words his disengagement does come under the definition of retrenchment or termination. So, the question of reinstatement does not arise.

8. Under this Issue two points arises for consideration. First one is whether the 2nd party is entitled for reinstatement with back wages and the second one is whether the 2nd Party is entitled for regularization.

9. As regards regularization no materials have been placed on behalf of the 2nd Party that a post was lying vacant and he was appointed in that post continuously. So, in absence of such materials the question of regularization does not arise. As regards reinstatement the stand of the 1st Party-Management is that when the engagement of the 2nd Party depends upon the availability of the work there is no scope for them to re-engage the 2nd Party in absence of any work. The 2nd Party has exhibited a large number of vouchers starting from Ext.-1 to Ext.-33 to support his stand that he had worked continuously under the 1st Party-Management for such a long period. It is submitted on behalf of the 1st Party-Management the statement made by the 2nd Party in this regard is not correct. The attention of this Tribunal has been invited to some of the vouchers by the 1st Party-Management and was submitted that those vouchers would disclose that the

2nd Party had worked for some full days in a month and for some hour in a day depending upon the availability of the work. Moreover, he was not assigned any particular work. I find much force in the contention made by the 1st Party-Management. The 2nd Party has stated that he was getting Rs. 25/- per day from 2nd April to 30th April in the year 1993. Ext.-5 reveals that he has been paid for 17 full days and four half days in the month of August 1993, Ext.-6 also reveals the similar fact that he was paid for 14 full days and four half days. There are some other vouchers, which reveal the fact that the 2nd Party had worked some days in full and some days in half in a month. So, the case of the 2nd Party that he has worked continuously every day can not be accepted. The vouchers would suggest that the service of the 2nd Party was being utilized depending upon the availability of the work. Ext.-1 to 33 series discloses that he was entrusted with different works but not a particular work. So, that would suggest that, while there was availability of work, the service of the 2nd Party was being utilized. So, in that case the 1st Party-Management can not be compelled to engage the 2nd Party when no work is available. Reliance has been placed by the 2nd Party in the case of Guru Charan Sahoo Versus Chairman-cum-Managing Director, Orissa Small Industries Corporation Ltd. and Another, reported in 1995 (I) LLJ 707. On the other hand reliance has been placed on behalf of the 1st Party-Management in the case of Allahabad Bank Versus Prem Singh, reported in (1996) 10 SC Cases 597, in the case of Himanshu Kumar Vidyarthi and Others, Versus State of Bihar and Others reported in (1997) 4 SC Cases 391 and in the case of State of Rajasthan and Others Versus Rameshwar Lal Gahlot, reported in AIR 1996 SC 1001. In Orissa Case the Workman though was not a graduate he was engaged in Class-III Post. No objection was raised at the time of his engagement. The 2nd Party-Workman discharges the duty and responsibility assigned to him to the satisfaction of the superiors. He had acquired experience for a considerable period. So, it was held that, it was neither fair nor proper for the 1st Party-Management to deny him the benefit of regular service merely on the ground of lack of educational qualification. So, the facts in Orissa Case is quite different from the facts of the present case wherein, the 1st Party-Management has taken the stand that the engagement of the 2nd Party depends upon the availability of the work. In Rajasthan Case (reported in AIR 1996 SC 1001) their Lordships were pleased to held that, when appointment is for a fixed period the termination does not come under the definition of retrenchment and it will not illegal unless it is malafide. In H.S. .Vidyarthi and Others case [reported in (1997) 4 SC Cases 391] it was held that, a person appointed on daily wage basis can not claim for the post and his disengagement from the service can not be considered to be a retrenchment under the Industrial Disputes Act. It was further held that the disengagement of the workman is not arbitrary. In my opinion, the submission made on behalf of the 1st Party-Management that the disengagement of the 2nd Party does not come under the definition of retrenchment has got force in view of the fact that the services of the 2nd Party was being utilized depending upon the availability of the work. So, in that case his termination or in other words refusal of engagement to the 2nd Party will not come under the definition of retrenchment and so the 2nd Party-Workman is not entitled for any relief for reinstatement particularly when his engagement depends upon the availability of work. So, this Issue is answered accordingly.

ISSUE NO. III

10. In view of my findings given in respect of Issue No. II the 2nd Party-Workman is not entitled for any relief. However, when the 2nd Party-Workman has worked for a considerable long period for the 1st Party-Management and had acquired some experience the 1st Party-Management can/shall utilize the service of the 2nd Party when the work would be available in future by giving priority.

11. Reference is answered accordingly.

Dictated and Corrected by me.

S.K. DHAL, Presiding Officer

BEFORE THE C.G.I.T.-CUM-LABOUR COURT: BHUBANESWAR

Tr. I.D. Case No. 56/2001

List of Witness Examined on behalf of the 2nd Party-Workman :

W.W. No. 1. Shri Paramananda Babu Goswami. (2nd Party-Workman, himself).

List of the Documents exhibited on behalf of the 2nd Party-Workman :

1. Ext. 01 to Ext.-33 are the payment vouchers.
2. Ext-34 is the copy of the letter, dated 20-3-1995 of Branch Manager LIC of India, Barbil to Shri Paramananda Babu Goswami, the 2nd Party-Workman.
3. Ext.-35 is the copy of the letter dated 11-12-1996 of Br. Manager LIC of India, Barbil to Shri Paramananda Babu Goswami, the 2nd Party-Workman.
4. Ext.-36 is the copy of the letter, dated 28-3-1998 of Paramananda Babu Goswami to the Br. Manager, LIC of India Barbil.
5. Ext.-37 is the copy of the letter, dated 13-4-1998 of the 2nd Party to the A.L.C. (Central), Rourkela.

List of Witnesses Examined on behalf of the 1st Party-Management.

MW. No. 1. Shri Bhajaraj Murmu.

MW No. 2. Shri Antaryami Mohanty.

List of Documents exhibited on behalf of the 1st Party-Management.

No. documents has been exhibited on behalf of the 1st Party-Management.

S.K. DHAL, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 402.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 2/23/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-1-2003 को प्राप्त हुआ था।

[सं. एल-12013/48/98-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 402.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/23 of 1999) of the Central Government Industrial Tribunal-cum-LC No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 2-1-2003.

[No. L-12013/48/98-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II MUMBAI

PRESENT

S.N. SAUNDANKAR, PRESIDING OFFICER

REFERENCE NO.CGIT-2/23 OF 1999.

EMPLOYERS IN RELATION TO THE MANAGEMENT OF BANK OF INDIA

Bank of India,
The Regional Manager,
BOI, Ajit Darshan,
1st Floor, Above National Punjab Hotel
Old Agra Road,
Thane.

AND

Their workmen

Bank of India Staff Union
The Gen. Secretary, BOISU,
BOI Building,
70/80 MG Road, Fort, Mumbai,
MUMBAI-400023

APPEARANCES:

For the Employers : Mr. L.L .D'Souza
Representative

For the Workmen : Mr. K.B. Talreja
Advocate.

Mumbai, dated 14th November, 2002

AWARD-PART-I

The Government of India Ministry of Labour by its Order No. L-12013/48/98/IR(B-II) dtd. 21-01-99 in exercise of the powers conferred by clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act 1947 have referred the following dispute to this Tribunal for adjudication :—

> "Whether the action of the management of Bank of India in imposing the punishment of reduction of pay to the lower stage for two years on Shri J.B. Madhawani is legal and justified? If not, to what relief the said workman is entitled?"

2. Workman Shri Madhawani was working as a staff clerk in the Bank of India, Branch Thane in the year 1993. By Statement of claim (Exhibit-7) Bank employees union averred that workman who put about 24 years clean and unblemished service had received a show cause notice dtd. 30-10-93 to which by the letter dtd. 9-11-93 workman had called certain documents from the bank to enable him to give reply to the said show cause notice. However it is contended bank instead of furnishing the documents issued him chargesheet dtd. 4-2-94 alleging there in that he canvassed and convinced sometime in the third week of March '90, Mr. Gagandas Topandas Saving Bank Account holder of the branch to invest in CAN 80 CC where his wife was an agent and after convincing him he had then written a cheque in favour of Canara Bank A/c. CAN 80 CC of Rs. 20,000/- which was received and debited to the account of said Topan Das S/B Account No. 1638 in clearing on 23-3-90 and that he had also canvassed and convinced Mr. Narayan Sadhwani a holder of Saving Bank Account No. 2440 of Ulhasnagar (Main) Branch to invest in Canara Bank Mutual Fund where his wife was an agent and that he issued a Cheque No. 050659 contending that those acts amount to misconduct within the meaning of clause 19.5 (a) and (j) of the Bipartite Settlement dtd. 19-6-66. Along with other two charges inquiry was held by the inquiry officer Mr. Joshi and that the bank was represented by Shri Phadke and Pradeep Shah was the Defence representative of the workman. It is pleaded the domestic inquiry was conducted against the Principles of Natural Justice and fair play. Workman was not given copies of the documents as demanded in the letter dtd. 9-11-93, inquiry officer did not record the proceedings properly, inquiry proceeding was recorded in the absence of workman and that Presenting Officer allowed to ask some leading

question to the management witness Mr. Jagatram M. Shirsat. It is averred that workman had requested the inquiry officer to allow him to represent by an advocate as the charge was complicated in nature but that was turned down thought the presenting officer was a legally qualified person there by prejudice had caused to him. It is contended that Defence Representative was not allowed the put relevant questions to the management witness Mr. Hinduja and that Defence representative was not allowed to examine the defence witnesses viz. Artani. It is the contention of union that, not only the inquiry was unfair on the grounds mentioned above but findings recorded by the inquiry officer are perverse in as much as he erred in appreciating the evidence of management witness Mr. Hinduja and though the charges were vague not specific as to when and where the workman canvassed and convinced Topandas and Sadhwani and when the workman wrote cheques for them and though not proved that wife of the workman was an agent, inquiry officer held the charge No.3 proved without any record and evidence to substantiate the same. It is pleaded that inquiry officer ignoring the contradictions between the statements of management witnesses looked and Branch Manager held that their evidence was supportive. It is averred the findings of the inquiry officer being perverse and that inquiry unfair union had requested the management to give personal hearing however without paying heed to that the Disciplinary Authority based on the inquiry report imposed punishment of reduction of pay to the lower stage for two years on the workman by the order dtd. 28-4-95 against which appeal was preferred but was turned down on 15-11-95 therefore the union has raised dispute before the Assistant Labour Commissioner (C) Mumbai which ended in failure. It is contended inquiry being unfair be set aside.

3. Management Bank of India resisted the claim of union by filling written statement (Exhibit-11) contending that workman was charged for four charges however inquiry officer exonerated the workman in respect of Charge No. 1&2 but found him guilty in respect of Charge No. 3 & 4 as mentioned in chargesheet dtd. 4-2-94. It is averred that the inquiry officer giving opportunity by the report dtd. 28-2-95 recorded the finding and giving opportunity to say on that to the workman punishment was is posed vide order dtd. 28-4-95. It is averred appeal preferred by the union was turned down hearing the workman in person. It is pleaded that in departmental inquiry it is not necessary to provide documents as desired unless it has relevance, the charges were not complex in nature and therefore under the banking regulation workman was not allowed to be represented by manangements. It is contended proper inquiry was held giving sufficient opportunity to workman and after evaluating the evidence and the circumstances inquiry officer recorded the findings which were not biased and the inquiry being fair claim of the workman be dismissed.

4. On the basis of the pleading my learned predecessor framed issues (Exhibit-13) and in the context of preliminary issues workman Madhwani filed affidavit in lieu of Examination-in-Chief (Exhibit-18) and union closed evidence vide purshis (Exhibit-24) In rebuttal Deputy Manager Mr. Joshi filed affidavit (Exhibit-25) and the management closed evidence vide purshis (Exhibit-48).

5. Workman filed written submissions (Exhibit-52/56) and the management (Exhibit-53) with copies of rulings at (Exhibit-54). On hearing the learned counsel for the workman and the learned representative of the management perusing the record and the written submissions I record my findings on the following preliminary issues for the reasons mentioned below :—

	Issues	Findings
1.	Whether the domestic inquiry which was conducted against the workman was against the Principles of Natural Justice?	Yes.
2.	Whether the findings of the inquiry officer are perverse?	Yes.

REASONS

6. According to workman, enquiry was not as per the principles of natural justice and fair play and that findings recorded by Inquiry Officer are against the record and evidence and hence perverse. So far as domestic enquiry is concerned. Their Lordships of the Apex Court in Sur Enamel and Stamping Works V/s. Their workmen 1963 II LLJ SCC pg. 367 ruled that :—

(i) the employee proceeded against has been informed clearly of the charges levelled against him.

(ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges.

(iii) the employee is given a fair opportunity to cross-examine witnesses.

(iv) he is given a fair opportunity to examine witnesses including himself in his defence if his so wishes on any relevant matter, and

(v) the Inquiry Officer records his findings with reasons therefor the same in his report.

7. So far the charge is concerned, it is seen from the inquiry report, workman was exonerated for charges no. 1 & 2 as not proved and that charge nos. 3 and 4 were proved. For charge no. 4 the Inquiry Officer suggested punishment of censure and charge no.3 punishment as referred in the schedule. Inquiry Officer Mr. Joshi in cross examination para 11 admitted that he had not given copy of the document Exhibit-8/2 and the letter wherein discrepancy as mentioned as gross misconduct under terms Clause 19.5 (J) marked 'A' on the document Exhibit-8/A and further admitted that he had not pointed out the alleged discrepancy as mentioned in show cause notice and the chargesheet before commencement of the enquiry to workman. Document enclosed with Exhibit-8 portion marked 'A' pertains to gross misconduct as alleged against the workman which admittdely did not point out to the workman and that according to him, enquiry was held exparte. This shows workman was not informed clearly of

the charges levelled against him and that he did not understand the same, thereby there is non-compliance of the test no.1 laid down in the ruling cited above.

8. It is in the evidence of workman that, Inquiry Officer allowed the Presenting Officer to present the statement of Union representative Mr. M.T. Lokade, but did not present him for cross-examination and that Inquiry Officer mainly relied on this witness as crucial witness to arrive at the conclusion. Mr. Joshi who held the enquiry, clearly admits in his cross-examination that statement of Lokade produced by Presenting Officer was taken on record however, opportunity was not given to workman to cross examine Lokade. Inquiry Officer has no documentary evidence to show that even copy of this statement of Lokade was given to workman. When Inquiry Officer accepted the statement of Lokade, copy thereof was necessary to be given to workman and opportunity to cross-examine. but he failed which is apparant that workman was not given opportunity.

9. So far recording of proceedings is concerned, according to Mr. Joshi he had recorded proceedings dated 18-8-94 and 10-1-95. However he does not remember whether copies of those were given to workman and that on perusing the record he is unable to throw light on that. So far proceeding dated 1-11-94 he had admittedly not supplied copy to the workman. According to Joshi he had passed order in writing to that effect. However that order is not on record and Joshi does not remember where that proceeding is. This clearly indicates that workman was kept in dark on this proceeding. So far dates of enquiry is concerned according to Joshi, enquiry was held on 10-8-94 --18-5-94 however nothing on record to show those dates were made known to workman. Mr. Joshi admits enquiry dated 18-5-94 was held against the workman in the absence of defence representative. This shows workman was kept away from the enquiry which is contrary to the material tests laid down in the above ruling.

10. The charge against the workman which according to Inquiry Officer is proved pertained to canvassing and convincing Gagandas Topandas and Narayan Sadwani to invest the amount of the Saving Account with the Bank, in Canara Bank Mutual Fund where his wife was agent. against the interest of the Bank of which he is an employee. However, Inquiry Officer is not aware whether wife of workman is agent of Can-80CC, which goes to the root cause of the matter. From this point of view, the findings recorded can safely said to be off the record.

11. The Learned Counsel for the workman, Mr. Talreja submits that rules of natural justice have not been followed therefore, inquiry vitiates. The question in a given case whether the principles of natural justice have been violated or not is to be found out as to whether the procedure adopted by the appropriate authority is in accordance with law or not and whether the delinquent knew what charges he was going to face. In short, what is required to be seen whether the workman knew the nature of accusation, whether he has been given an opportunity to state his case and whether the authority has acted in good faith. On going through the admissions and discussion of evidence supra, it is apparent that principles of natural justice are violated.

12. Inquiry Officer Mr. Joshi is admittedly M.com. LL.B. and on going through the proceedings Inquiry Officer admits, Presenting Officer was a Law Graduate. Workman was a Clerk and his defence representative Mr. Pradeep Shah also a staff member. According to workman in this context prejudice had occassioned. We are on the point of fairness of enquiry, the objective is to ensure a fair hearing, a fair deal to the person whose rights are affected. The object of principles of natural justice are now understood as synonymous with the obligation to provide fair hearing so as to ensure that justice is done. The fact that, Inquiry Officer and Presenting Officer were Law Graduate and the workman and his defence representative staff members certainly there was imbalance and if looked from equity, good concious and justice, hardly can be said that enquiry was fair in the light of the decision in State Bank of Patiala and others V/s S.K. Sharma *1996 II CLR pg. 29.*

13. The Learned Representative for the management Mr. D'Souza inviting attention to the written submissions and the rulings filed therewith and the cross-examination of the workman para 18 submit that by admissions workman himself pointed out that enquiry was fair therefore, he submits no inference other than fairness of enquiry can be drawn. When Inquiry Officer Mr. Joshi pointed out that no opportunity was given to workman to cross-examine Lokade, proceedings were recorded in the absence of workman, dates of hearing were not intimated to him and that copy of the statement of witness as well proceedings were not supplied and without knowing whether Mrs. Mandhwani was an agent of CAN or not. conclusions are drawn where from no inference other than improperness of enquiry can be drawn i.e. against the principles of natural justice. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and technicalities and irregularities which do not occassion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end, would be a counter-productive exercise, for which a reliance can be had to State Bank of Patiala case, referred to supra.

14. It is thus clear that enquiry was not fair and proper. So far findings of Inquiry Officer according to workman are perverse, since enquiry vitiates there is no need to consider the same as held by His Lordship of Bombay High Court in C.Rly CST Mumbai V/s. Rajan Kumar Mohalik 2000 II CLR 117. Assuming that point remains, it is seen from the enquiry proceedings, though Inquiry Officer was not knowing whether workman's wife was agent or not held the charge nos. 3 & 4 proved obviously off the record, therefore perverse. Issues are consequently answered in the affirmative and hence the order :—

ORDER

The domestic inquiry conducted against the workman was not as per the Principles of Natural Justice and findings of Inquiry Officer are perverse. Management is allowed to lead evidence to justify its action.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 403.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल. आई. सी. ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, मुम्बई के पंचाट (संदर्भ संख्या 2/224-1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-01-2003 को प्राप्त हुआ था।

[सं. एल-17011/15/99-आई. आर. (बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 403.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/224 of 1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 02-01-2003.

[No. L-17011/15/99-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT

SHRI S. N. SAUNDANKAR, Presiding Officer.

REFERENCE NO. CGIT 2/224 OF 1999

Employers in Relation to the Management of LIC of India

The Zonal Manager,
LIC of India Western Zone,
Yogakshema East Wing,
Jeevan Beema Marg,
Mumbai-400021

AND

Their Workmen
Ins. Employees Association
Genl. Secretary,
Insurance Employees Association,
Gulestan Building, II floor,
M.D. Marg, Fort,
Mumbai-400001.

APPEARANCES:

For the Employer : Mr. V.W. Bapat,
Representative.

For the Workmen : Mr. A.S. Deo,
Mr. C.S.Dalvi, Representatives.

Mumbai, Dated 13th November, 2002

AWARD

The Government of India, Ministry of Labour, by its order No. L-17011/15/99/IR (B-II) dtd. 30-11-1999 in exercise of the powers conferred by clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following Industrial dispute to this Tribunal for adjudication :—

SCHEDULE

Whether the action of the management of LIC of India D.O. IV in terminating the services of Shri K.H. Ghasmare w.e.f. 10-01-1996 is legal and justified? If not, to what relief the workman is entitled to ?

2. Workman Ghasmare was working as a Record Clerk with the LIC in the year 1995 after getting promotion in the year 1992 from the cadre of Class-IV. Vima Kamgar Sanghatana vide Statement of Claim (Exhibit-4) pleaded that the LIC Staff Regulations govern the services of Class-III cadre. It is pleaded that workman remained absent due to sudden mental illness from 8-5-95 for which management issued him charge sheet-cum-show cause notice dtd. 24-11-95 proposing his removal and that on 10-1-96 passed an order of his removal from service. It is pleaded workman appealed the said order on 19-7-96 to the Zonal Manager, Appellate Authority enclosing two certificates from the competent Doctors in support of his contention pointing therein that one sweeper Banwarilal Totaram though removed was reinstated and thereby workman was discriminated but the appeal was turned down on 14-7-97. It is pleaded workman had preferred a memorial to the Chairman on 14-8-97 mentioning therein the irregularities however that was rejected also on 10-8-98. It is contended without holding inquiry and giving opportunity to the workman and making discrimination he was removed from the service. Therefore the action of the management being violative of Rules and Regulations union had raised dispute with A.L.C. (C), Mumbai on 5-1-99 but ended in failure. It is the contention of union that the action of the management being illegal and unjustified management be directed to reinstate the workman in service with full back wages.

3. Management LIC resisted the claim of union by filing Written Statement (Exhibit-5) contending that the workman was engaged as peon in the year 1989 and that he was promoted in 1992 and posted at Branch No. 908 Mumbai Divisional Office-IV and thereafter he started remaining absent. He was a chronic absentee and that he remained absent without prior permission/intimation to office from 9-8-95. It is averred since workman remained absent for which an inference of abandonment of posts

was drawn against him in terms of Regulation 39 Clause 4 (iii) read with Explanation (l) there to asking his say by the letter dated 25-8-95 and thereafter a chargesheet-cum-show cause notice was issued to him dated 24-11-95. It is pleaded sub-regulation (4) of Regulation 39 empowered the Disciplinary Authority to dispense with the requirements of Sub-regulation (2) when an employee has abandoned his post and that the workman inspite of giving opportunity to submit his say remained absent and that the notice returned undelivered by the postal authorities and consequently copy of the same was displayed at the notice board of the branch where the workman was posted from 13-12-95 to 28-12-95 as required under Explanation 2 of Regulation 39 which was the compliance of the Principles of Natural Justice. It is pleaded since workman did not resume his duties in terms of clause (f) of sub-section (l) of Regulation 39 Disciplinary Authority removed him vide order dtd., 10-1-96. The same was not challenged by the workman in Appeal/Memorial within the time prescribed of three months that was rejected. Management denied that workman had enclosed two medical certificates from the doctor and contended that there was no evidence of workman been suffering from any illness much less mental illness. Consequently it is contended removal of workman is totally justified and legal, hence the claim of workman be dismissed in limine being devoid of substance.

4. On the basis of the pleadings issues were framed by my Learned Predecessor at Exhibit-7 and in that context workman Ghasmare filed affidavit in lieu of Examination-in-Chief (Exhibit-13) and closed oral evidence vide purshis (Exhibit-14). In rebuttal Ms. Sutha Roy, Assistant Administrative Officer filed affidavit (Exhibit-15) and the management closed oral evidence vide purshis (Exhibit-18).

5. Union filed written submissions (Exhibit-21) alongwith copies of rulings and the management (Ex-20). On perusing the record as a whole, written submissions and hearing both the representatives, I record my findings on the following issues for the reasons mentioned below :—

Issues	Findings
1. Whether the action of the management of LIC in terminating the services of Shri K.H. Ghasmare w.e.f. 10-1-96 is legal and justified ?	No
2. If not to what relief the workman is entitled to ?	As per order below.

REASONS

6. Workman Ghasmare was admittedly working as a record clerk in Branch No. 908 of LIC Mumbai Divisional Office-IV after having confirmed on 1-6-93. Workman stated that he was sick and therefore he was absent from office from 9-8-95 and that without informing him giving any opportunity he was terminated by the order dtd. 10-1-96. Assistant Administrative Officer Mrs. Roy pointed out that workman without informing remained absent for more than 90 days therefore by the letter dtd. 25-8-95 he was intimated that his absence could be inferred as abandonment of service and consequently penalty of removal should not be imposed which issued to workman on the address of his residence at Borli, Raigad returned unserved and the same was displayed on the notice board of branch however workman did not reply that and therefore under the service regulations since workman abandoned the service he was removed by the letter dtd 10-1-96.

7. Workman admits in his cross examination para 16 that 8-8-95 was his last working day and that he did not apprise the office on his absence as he was sick and that he filed medical certificates after the order on appeal. It is therefore apparent that workman was absent from duty from 9-8-95. Now point crops on whether this absence amounts to abandonment of service of the Corporation under the provisions of the regulation. Rule 21 of the Regulation states every employee of the Corporation at all times to confirm to and abide by the said regulation and to observe and obey all the directions/orders. Regulation 30 clause (i) speaks an employee of the Corporation shall not absent himself from his duties without having obtained the permission of the Competent Authority even if remained absent in case of sickness. Regulation 61 sub-clause (a) mentions leave cannot be claimed as a matter of right and sub-clause (e) point out wilful absence from duty be treated as breach of staff regulation. Regulation 39 clause (3) states if the employee remains absent for 90 days without intimation inference could be drawn on the abandonment of post and that special regulation clause (4) empowers the Disciplinary Authority to dispense with the requirements of sub-regulation clause (i) and (ii) when an employee has abandoned his post and that procedure is laid down under Sub-regulation (1) clauses (a) to (g). Under Sub-regulation (2) a show cause notice is required to be issued to the absentee employee and copy thereof to be displayed at the notice board of the Branch.

8. The Learned Representative for the management Corporation submits that since workman remained absent from 9-8-95 vide letter dtd. 25-8-95 he was informed to resume duty and since more than 90 days he did not resume chargesheet-cum-show cause notice dtd. 24-11-95 was issued and inspite of that workman did not turn up therefore by the letter dtd. 10-1-96 punishment of removal was imposed upon him in consonance with the provisions of the Regulations referred to above. Inviting attention of this tribunal to paragraph 5 of the Written Statement wherein details of his absence are depicted the representative for the management submits that workman

is a chronic absentee since 1993 and that he continued to remain absent from 9-8-95 therefore his removal is legal and justified considering the place where he was working.

9. Mrs. Roy admits in cross-examination para 12 that no inquiry was held against the workman and that workman's absence prior to 9-8-95 was regularised by the office therefore the management cannot have any grievance on the earlier absence. Mrs. Roy in cross-examination para 11 disclosed that workman was removed as on earlier occasions he had remained absent has no relevance because, admittedly as stated above his earlier absence was regularised. So far the absence for more than 90 days from 9-8-95 which the management treated absence as abandonment of service is concerned she admits except letter dtd. 25-8-95 no other letter was displayed on the notice board on the absence of workman. Letter dated 25-8-95 filed with list (Exhibit-6) is after about 16 days apprising worker to resume on duty. It is seen from the record by the letter dtd. 24-11-95 workman was informed as to why his absence could not be inferred as abandonment of service and that letter was admittedly not given to workman including the letter of removal dtd. 10-1-96. This clearly shows that notice dtd.24-11-95 nor letter of removal dtd. 10-1-96 were given nor inquiry was held against him which is utter disregard to the industrial law. Their Lordships of Supreme Court in Jaishankar V/s. State of Rajasthan AIR 1966 pg. 492 ruled :

> "Removal from service without giving opportunity to show cause is illegal."

Their Lordships in State Bank of Patiala and Ors. V/s. S. K. Sharma 1996 II CLR 29 pointed out "the Principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries : a distinction ought to be made between violation of the principle of natural justice, audialteram partem, as such and violation of a facet to the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and " no adequate opportunity" To illustrate—take a case where a person is dismissed from service without hearing him altogether (as in Ridge V. Baldwin). It would be a case falling under the first category and the order of dismissal would be invalid or void, if one chooses to use that expression (Calvin V. Carr.)."

10. Their Lordships further observed that such matters are to be looked at from the angle of justice or of Natural Justice. The object of the Principles of Natural Justice which are now understood is synonymous with the obligation to provide a fair hearing as to ensure that justice is done, that there is no failure of justice and that every person whose rights are going to be affected by the proposed action gets a fair hearing. Their Lordship quoted :

> "Justice means justice between both the parties The interests of justice equally demand that th guilty should be punished and that technicalitie and irregularities which do not occasion failure o justice are not allowed to defeat the ends of justice Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise."

11. Mrs. Roy admits in cross-examination para 11 that no letter was served to workman after his continued absence of 90 days and that as stated above no inquiry was held. She disclosed that letter dtd. 25-8-95 was displayed on the notice board however according to workman he was not aware of any communication from the office. The fact that letter dtd. 25-8-95 was not made to known to workman, letter dtd. 24-11-95 and 11-1-96 were not sent at all to workman nor displayed on the notice board, which indicates no notice/no hearing therefore in view of the observations. In the case cited above disciplinary order becomes invalid/void and from this point of view, the action of the management can safely be said to be not legal.

12. According to Mrs. Roy workman had preferred appeal on 19-7-96 and that according to workman he had filed medical certificates after the order on appeal. On perusal of the documents filed with list (Exhibit-6). It is seen medical certificates pertain to workman of the year 1995 and 1996 which shows he was suffering from schizophrenia. It is not that workman had not filed medical certificates. Certificates indicate he was sick during the material period and if looked nature of illness and that he was not made to know by the office and that he preferred appeal against the order of removal dtd. 10-1-96 on 19-7-96 which indicates on knowing from the office workman approached the Appellate Authority. It is not that workman did not do anything. Considering this and the glaring position discussed supra to my view action of the management is not only illegal but unjustified too.

13. Workman admits the leave account mentioned in para 5 of the written statement which shows he had availed all type of leave. his leave prior to 9-8-95 was regularised. He was absent from duty due to illness and that no leave was at his credit therefore he is not entitled to back wages from 9-8-95. Since his removal is illegal and unjustified the management will have to be directed to reinstate him in service. Issues are therefore answered accordingly and hence the order :—

ORDER

The action of the management of LIC of India D.O. IV in terminating the services of Shri K. H. Ghasmare w.e.f.

10-01-96 is neither legal nor justified. Management is directed to reinstate the workman Ghasmare in service.

S. N. SAUNDANKAR, Presiding Officer.

नई दिल्ली, 7 जनवरी, 2003

का. आ. 404.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स चौगुले एण्ड कं. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, मुम्बई के पंचाट (संदर्भ संख्या 1/49 ऑफ 1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-01-2003 को प्राप्त हुआ था।

[सं. एल-36011/2/95-आई. आर. (एम)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/49 of 1995) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Chowgule & Company Ltd. and their workman, which was received by the Central Government on 02-01-2003.

[No. L-36011/2/95-IR(M)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT:

Shri Justice R. S. Verma, Presiding Officer

REFERENCE NO. CGIT : 1/49 OF 1995

PARTIES:

Employers in relation to the management of M/s. Chowgule and Co. Ltd.

AND

Their Workmen

APPEARANCES:

For the Management	: Shri R.N. Shah, Advocate
For the Workman	: Shri V. A. Pai.
State	: Goa

Mumbai, dated the 14th day of August, 1996.

AWARD (PART-I)

The appropriate Government has referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of M/s. Chowgule and Company Ltd., Mormugao Harbour, Goa, in dismissing from service Shri Pradeep V. Talaulikar, Clerk-II Code No. 7775 and Shri Shaba P. Gaonkar, Mechanic, Code No. 8622 who were also the joint Secy. and Executive Member respectively of the Chowgule Employees Union, w.e.f. 14-07-1995 is justified ? If not, to what relief the workman are entitled to ?"

2. Shorn of unnecessary verbiage, the case of the union espousing the case of the two workmen named in the schedule is that the two workmen P.V. Talaulikar and Shaba P. Gaonkar were respectively the Joint Secretary and Executive Member of the union. The management illegally intended to start a third shift for the workmen which was opposed by the union. The union also sought the intervention of the Assistant Labour Commissioner in the matter. One K.A. Pai, a checker employed at Costi B Mines was directed to go to Beneficiation plant at Costi A Mines on 6-1-95. This transfer of his was opposed by the union, but to no avail and said Mr. K.A. Pai was chargesheeted by the management and the chargesheet was displayed at the Notice Board of the company. The two workmen before me along with some other members of the union are said to have taken up the issue with the Mines Manager. However, this is all besides the point because these issues have not been referred to this Tribunal and I have given point a briefest possible gist of what the union has alleged as a background of the action taken by the management against the two workmen.

3. Now, the facts pertaining to the present dispute. An incident is said to have taken place on 4-2-95 at 2.00 p.m at the office of the Mines Manager Shri Kishore B. Haldankar. A large group of workmen said to have been led by Shaba Gaonkar are alleged to have gone to the office of the said Shri Haldankar. At that time Shri Haldankar was discussing certain official matters with certain other officers of the company viz. B.S. Kantak, S. P. Lingayat and Vishwas B. Naik. Shri Haldankar asked Shri Shaba Gaonkar to come with 4 and 5 persons only and not with a huge crowd for discussions. At this Shaba Gaonkar Shouted at the Mines Manager and asked him if he would withdraw the notice displayed on the Notice Board of the company regarding disciplinary action against Krishna A. Pai. At this very juncture, P.V. Talaulikar, who was working as a Clerk in the office of the Mines Manager also demanded to know if Mr. Haldankar would remove the said notice from the Notice Board or not. Mr. Talaulikar also challenged Mr. Haldankar to send away the officers already sitting in the room of Mr. Haldankar. Mr. Haldankar told the two workmen that he would not withdraw the said notices, nor would he send out his officers, sitting with him. Mr. Haldankar at this juncture called a loud for Mascarenhas,

the Administrative Officer, who had his office nearby. At this the two workmen viz. Mr. Talaulikar and Shaba Gaonkar threatened Haldankar to withdraw the notices in respect of Krishna A. Pai within five minutes. Mr. Haldankar felt humiliated and insulted at such behaviour of the two workmen, who after some time left his office after extending the threat as stated above.

4. It appears that a letter, similarly worded was sent to the two workmen, informing them of their suspension pending a domestic enquiry. Both of them are said to have refused to accept the said letters. Chargesheets dated 21-3-95 were tried to be served on the two workmen in respect of the said incident. However, the two workmen did not accept the chargesheets as well. A domestic enquiry is said to have been conducted against the two workmen by Mr. G.M. Nagarsenkar, (who was nominated Enquiry Officer) which they did not attend and which they boycotted. At the exparte domestic enquiry, the evidence was recorded by the Enquiry Officer and eventually he submitted his reports dated 31-5-95 holding the two workmen guilty of all the charges listed in the chargesheets. The Managing Director accepted the findings of the Enquiry Officer and issued show cause notices to the two workmen by similar letters dated 10-5-95 by Registered Post AD as also under certificates of posting. Both the workmen sent their separate replies dated 28-6-95 to the said show cause notices wherein both of them alleged that they were being victimised for their trade union activities and the enquiry held against them suffered from bias and partisan attitude. Both of them were also heard personally by the Managing Director. The Managing Director was not satisfied by the explanations given by the two workmen and dismissed them from service by issuing separate but similar letters of dismissal dated 14-7-95.

5. The matter was taken up in conciliation; conciliation failed and eventually the appropriate Government made a reference as above.

6. The workmen through the union filed a detailed written statement of claim *inter alia* stating the background of the dispute. It was admitted that the workmen did not participate in the enquiry and an exparte enquiry was held and they were dismissed. It was pleaded that the enquiry was not legal, fair and proper. It was pleaded that the evidence led at the enquiry was contradictory and not a single workman was examined at the enquiry. It was pleaded that the charges were not established and the punishment inflicted was disproportionate.

7. The management filed its written reply and traversed the pleas of the union. A rejoinder was also filed by the union.

8. At the hearing, learned counsel for the union raised a legal plea that chargesheet to the two workmen was issued by a person not competent to do so. Since, it was purely a legal issue, I allowed it to be taken orally and framed the following issues:

(i) Whether the chargesheets to the workmen were issued by a competent authority?

(ii) Whether the enquiry held against the workmen was legal, fair and proper?

(iii) Whether the charges levelled against the two workmen have been proved on the basis of acceptable evidence and the Tribunal is satisfied about the finding of guilt returned by the Enquiry Officer and accepted by the Disciplinary Authority?

(iv) Whether the punishment inflicted on the workmen is just and proper?

9. Both the sides did not choose to lead any oral evidence and argued the matter extensively on the basis of the documentary evidence placed on record with regard to Issue No. (i) to issue No. (iii). I have carefully considered the rival contentions and have also perused the record.

10. At the outset, I may state that the dispute regarding illegality or otherwise of the starting 3rd shift by the management has not been referred to this Tribunal. Likewise, the correctness or legality of the action of the management in allegedly displaying the notice regarding disciplinary enquiry, on the notice board pertaining to disciplinary action against co-workman K.A. Pai has not been referred to this Tribunal.

Assuming but not holding that the actions of the management on these two points were illegal, it did not give a right to the workmen and their leaders to intimidate, insult or humiliate their superior officers in the management. Collective bargaining on behalf of unions does not envisage threats, intimidations, insults or humiliations to be showered on senior officers of management and if the workmen are under an impression that they are entitled to do so in the name of collective bargaining, they must disabuse their minds from such a perverted notion of collective bargaining. This country is facing global competition in its industrial activities and it can not stand in competition with other advanced countries if such activities are allowed to go on under the mask of collective bargaining. Collective bargaining is essentially a weapon of non-violence in the hands of the workmen and there is no place for threats, insults, intimidations and humiliations in the creed of collective bargaining. Suffice it to say that even the learned counsel for the union did not press this point and very candidly and fairly conceded that I need not enter the arena of the disputes not referred to the Tribunal.

11. Now, I take up issue No.(ii). In the present case, the letters of suspension as also chargesheets were issued by 'Incharge Costi group of Mines'. The Enquiry Officer

was also appointed by the very said authority. It is an admitted position before me that the disciplinary action against the workmen is governed by the provisions of certified standing orders issued by the management, xerox copy of which has been placed on record by the union and appears at pages 63 to 76 of the compilation filed, by the union. Shri V.A. Pai contended that clause 21 of the said standing orders governed the issue of chargesheet and was required to be given by the Head of the Department after prior approval of the Director. It is submitted that in the present case, the two chargesheets were not issued by the Head of the Department and hence the entire proceedings stood vitiated. In reply, the management submitted an authorisation letter No.MNG/ADM/95 dated 11-11-93 issued by the Executive Director in favour of Shri Mascarenhas, Administrative Officer. The genuineness of this document has not been disputed before me but Shri Pai submits that this authorisation was for a limited purpose and J. Mascarenhas Administrative Officer, did not assume the character of a Head of the Department, which he admittedly was not. Here, it would be profitable to reproduce the said document. It reads as follows :

"HEAD OFFICE

Mr. J. Mascarenhas, MNG/ADM/95

Administrative Officer, 11.11.1993.

Authorisation.

COST GROUP OF MINES

You are hereby authorised to sign, with immediate effect for Incharge, Costi Group of Mines till further instructions, in view of posting of Mr. V. B. Hede from Costi Group of Mines to Tudou Establishment.

Sd-

EXECUTIVE DIRECTOR"

12. A bare reading of this letter shows that the authorisation in favour of the Administrative Officer, was made due to a particular exigency *viz.* that Mr. V. B. Hede had been posted out from Costi Group of Mines. Now, there is nothing on record to show as to when the authority of Mr. Mascarenhas under the authorisation letter lapsed. Hence, it shall have to be presumed that this authority continued with him till he signed the impugned chargesheets etc. Hence, this objection to the legality of the issue of chargesheets is devoid of any substance.

13. Shri R. N. Shah for management vehemently urged that a plea with regard to issue of chargesheet by a person not competent to do so was not raised in the written statement of claim of the union and hence it should not be allowed to be argued. He relied in this connection upon 1981 I LLJ 381 S. S. Sharma & others, wherein the apex Court made the following observations in para 6 of the judgment.

"At the outset an objection was taken by the respondents to our entertaining the contention because, they point out, it is not a contention raised in the writ petitions and should not be allowed to be raised for the first time by way of oral submission in the course of arguments during the final hearing of the writ petitions. It is not denied by learned counsel for the petitioners that the point has not been specifically and clearly raised in the writ petitions, but he asks us to consider it by reason of what he describes as "its fundamental importance." We have carefully perused the writ petitions, and it is plain that the entire scope of the petitions is limited to challenging the validity and application of the Central Secretariat Service, (Amendment) Rules, 1979 and the consequent regulations for holding a limited departmental competitive examination. No relief has been sought for quashing the Office Memorandum dated 20th July, 1974. No ground has been taken in the Writ Petitions assailing the validity of the Office Memorandum on the basis now pressed before us. We are of opinion that the Courts should ordinarily insist on the parties and should not be permitted to deviate from them by way of modification on supplementation except through the well-known process of formally applying for amendment. We do not mean that justice should be available to only those who approach the Court confined in a strait jacket. But there is a procedure known to the law, and long established by conified practice and good reason, for seeking amendment of the pleadings. If undue laxity and a too easy informality is permitted to enter the proceedings of a Court it will not be long before a contemptuous familiarity assails its institutional dignity and ushers in a chaos and confusion-undermining its effectiveness. Like every public institution, the Courts function in the security of public confidence, and public confidence resides most where institutional discipline prevails. Besides this, oral submissions raising new points for the first time tend to do grave injury to a contesting party by depriving it of the opportunity, to which the principles of natural justice hold it entitled, of adequately preparing its response.

7. We must, therefore, decline to entertain the point now raised concerning the validity of the Office Memorandum."

14. I may state that the aforesaid observations were made in context of pleadings in writ petitions, which are ordinarily drafted by trained lawyers. These observations would not be opposite with regard to pleadings in industrial disputes and this is why I allowed the plea to be taken and also allowed the management an opportunity to produce the authorisation letter in question.

15. Shri Shah contended with great vehemance that it was hardly material as to who initiated the chargesheets and the disciplinary action. In this regard, Shri Shah relied upon certain rulings, to which I may refer to, at this juncture. 1970(2) SCC 108 State of Madhya Pradesh *vs.* Shardul Singh is the leading case on the subject. In this case the contention was that the Superintendent of Police was not competent to initiate or conduct the enquiry because it was the Inspector General of Police, who alone could have ordered dismissal of the employee. The High Court accepted this contention but the Apex Court overruled the judgment of the High Court and laid down the proposition that enquiry initiated by a subordinate authority, other than the authority competent to dismiss the employee, did not suffer from any illegality. The ratio of the judgment was that guarantee in Article 311(2) of the constitution that no employee shall be dismissed by an authority inferior to the authority appointing the employer, did not imply a further guarantee that disciplinary enquiry should also be initiated by the authority competent to dismiss the employee. This ruling was followed by the Delhi High Court in 1973-I LLJ 316 - Workman of Overseas Bank. In that case the disciplinary enquiry was not governed by Article 311 of the Constitution of India but was governed by provisions of relevant awards. In that case, the contention was that the chargesheets were issued by an authority not competent to do so and hence the enquiry was bad. A learned Single Judge of the Delhi High Court following State of M.P. (Supra) held that when the order of dismissal was passed by a competent authority, initiation of charge sheet by an authority, not competent to do so, hardly mattered and did not invalidate an order of dismissal passed by a competent authority. This very view in a slightly different manner was adopted by the Calcutta High Court in 1991 I LLJ 536 Gramophone Co. of India Ltd. In this case the chargesheet was issued by a subordinate authority and on a domestic enquiry taken in pursuance of such chargesheet, the dismissal order was passed by the competent authority. It was held that the enquiry was not vitiated due to such a defect.

16. Learned Counsel for the union contended that provisions of certified standing orders become part of the terms and conditions of service between the employer and employee and hence the management was bound to initiate enquiry in accord with provision of clause 21 of the Standing Orders and since this was not done, and the enquiry was initiated not by the Head of the Department is bad and the rulings cited on behalf of the management do not apply to the present case. So far as the contention goes that the Standing Orders certified under the Industrial Employment Standing Orders Act become a part of the terms and conditions of service between employer and employee, the same is unexceptionable. However, the contention that enquiry, not initiated by the Head of Department, is unlawful and bad can not be accepted. At best, it would be an irregularity and the employees, who have not participated in the enquiry and have boycotted the same, can not take advantage of such an irregularity, unless they plead and establish that the irregularity has caused prejudice in any manner to the employees. In the present case, learned counsel for the union failed to show as to what prejudice had been caused to the employees. Hence, following the precedents cited on behalf of the management, I hold this issue against the union.

17. Issue No. (ii) Learned Counsel for the union urged that clause 21 of the certified standing orders provided inter alia as follows:

> "The Director will weigh the evidence recorded before formulating the punishment to be awarded to the workman concerned. He shall then send for him, appraise him of the punishment to be awarded, and give him an opportunity to explain or adduce reasons, if any, against the proposed punishment. All this will be taken into account by the Director before recording his final decision in the case. A copy of the order passed by the Director shall be supplied to the workman concerned.
>
> The workman who, as a result of such trial is ordered to suffer any punishment shall have a right of appeal to the Managing Director."

It is contended that in the present case, the final order was passed, not by the Director but by the Managing Director and thus the workmen were deprived of their right of appeal to an authority, higher than the disciplinary authority and this has vitiated the entire enquiry. Shri Shah has countered this argument by urging that firstly this plea had not been taken by the union in its pleadings, secondly, the workmen had boycotted the enquiry and hence it hardly mattered as to who had passed the final order, lastly, he has urged that in its rejoinder, the union had taken a specific plea as follows:

> "The Union humbly submit, it is not necessary to examine the fairness, legality and validity of the enquiry and the findings of the enquiry officer as stated earlier, the entire issue eminate from the circular dated 21-12-1994 requiring the workmen to report for third shift working is not as per the procedure provided in the certified standing orders and the company of its own withdrew the said notice goes to show that they were at fault and consequently all the matters connected, related, need to be treated as closed and no action is called for against the workmen who rightly agitated against the arbitrary notice put up by the Company."

It is urged that in view of this specific plea, the union is estopped from taking the particular plea.

18. I have considered the rival contentions. This is true that the union did not take this plea either in its written

statement of claim or in its rejoinder. But this is purely a legal plea and their is no estoppal against a plea in law. Now, a bare look at the relevant portion of clause 21 of the certified standing order, reproduced above goes to show that the order of dismissal should have been passed by a Director and the dismissed workmen had a right of appeal before the Managing Director. In passing order of dismissal himself, the Managing Director has undoubtedly deprived the two workmen of their valuable right of appeal. In doing this, a term and condition of service between the employer and employee has been violated. I may add that right of appeal is a valuable right. It gives the workman right to put across his point of view to a superior authority, other than the one passing the order of dismissal. Hence, I am of the view that enquiry in the present case has been vitiated due to violation of the aforesaid clause 21. The issue is decided accordingly.

19. The management in its reply has specifically pleaded that in case the enquiry is held to be vitiated, the management be given an opportunity of proving the charge before the Tribunal. In view of the opinion expressed by me, I need not decide issue No. 3 just now and deem it proper to grant opportunity to the management to prove its charge against the two workmen by leading evidence before this Tribunal.

20. The management may file affidavits of its witnesses within three weeks of receipt of this order and may supply the copies of such affidavits to the union within the said period. The management shall keep present its witnesses for corss-examination before the Tribunal at Bombay on 14-10-1996. In case, any of the witnesses require to be summoned, steps be taken expeditiously in thts direction.

21. Union and the management be duly informed of this order.

R. S. VERMA, Persiding Officer

ANNEXURE-II

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present

SHRI JUSTICE S.C. PANDEY, Presiding Officer

REFERENCE NO.CGIT-49/1995

Parties :

Employers in relation to the management of M/s. Chowgule & Co. Ltd.

AND

Their Workmen

Appearances :

For the Management	:	Mr. R. N. Shah, Adv.
For the Workman	:	Mr. V. A. Pai, Adv.
State	:	Maharashtra

Mumbai, dated the 16th day of December, 2002

AWARD

1. This is a reference made by the Central Govt. under Section 10(1)(d) read with Sub-section 2-A of that section of the Industrial Dispute Act, 1947 (the Act for short) for adjudication of the dispute between Employers in relation to M/s. Chowgule & Co. Ltd. (The company for short) and their workmen represented by the Chowgule Employees Union (the union for short).

The terms of reference are as follows :

"Whether the action of the Management of M/s. Chowgule and Company Ltd., Marmugao Harbour, Goa in dismissing from service Shri Pradeep V. Talaulikar, Clerk-II, Code No. 7775 and Shri Shaba P. Gaonkar, Mechanic, Code No. 8622 who were also the Joint Secretary and Executive Member respectively of the Chowgule Employees Union, w.e.f. 4-7-1995 is justified? If not, to what relief the workmen are entitled to?"

2. It is not in dispute that Pradeep V. Talaulikar was employed as Clerk in grade-II and Shaba P. Gaonkar was serving as a Mechanic with the company. Both of them shall be referred to as workman for short.

3. In its statement of the claim, the union stated that the management of the company illegally started the third shift. Pursuant to the illegal orders passed by the management one K. A. Pai, a checker employed at Costi B, Mines was transferred to Beneficiation Plant of Costi A Mines. The union was opposed to start of the third shift as well as consequent transfer of K. A. Pai. K. A. Pai was charge sheeted for disobedience of the order of the management and the same was displayed on the notice board. Shri K. A. Pai approached the Joint Secretary, of the union. Mr. Talaulikar member of the Executive Committee union. Mr. Shabagaonkar, P. M. Naik and Mr. H. Alemao to intervene on his behalf with the management. It is alleged Mr.Talaulikar and Shabagaonkar had approached the Mines Manager on behalf of Mr. K. A. Pai along with Mr. Alemao. Thereafter, the two workmen i.e. Talaulikar and Shabagaonkar were suspended and a charge sheet was issued against them for alleged misconduct.

4. It is stated that workmen did not attend the enquiry. It was held ex-parte. The enquiry officer found them guilty of charges. By orders dated 14-9-1995 the aforesaid two workmen were dismissed. It was stated that the findings recorded by the enquiry officer were based trumped up

charges. The evidence on record revealed that the enquiry was an arranged affair. The workmen were charged with ulterior motive. It was alleged that record of the workmen in past was clean and the management of the company dismissed their past record.

5. The company stated that aforesaid two workmen and officer bearers were charge sheeted on the following allegations and the charges.

(i) Willful disregard or disobedience of orders.

(ii) Willful insubordination and breach of discipline.

(iii) Willful dangerous or obstructive working.

(iv) Riotous, disorderly or indecent behaviour in the Department or Section or any act subversive or discipline.

(v) Illegal stoppage or going on illegal strike or abetting, inciting, instigating or acting in furtherance of such strike or stoppage.

(vi) Intimidation of Superior Officer or Officers of the Company.

It was stated that an independent enquiry was held against the aforesaid workmen after giving them due opportunity. The workmen did not attend the enquiry. The enquiry reports dated 31-5-1995 and 2-6-1995 found the workmen guilty of the charges. Each of the workmen served with one final show cause notice dated 10-6-1995 requiring them to state why they should not be dismissed. The workmen were also given personal hearing. They also submitted their arguments in writing soon after oral hearing given by the Managing Director on 28-6-1995. Thereafter, the impugned orders dated 14-7-1995 were passed dismissing the workmen from service.

4. In rejoinder there was denial of the facts because the Union had in Statement of Claim taken the stand that ordering of third shift itself is illegal and that was the cause of agitation. The following portion taken from paragraph 7 reveals the stand of the workmen.

"Based on the facts and the law relating to the facts if the dismissal is not justified what relief the workmen are entitled to, is to be determined by the Honourable Court. The Union humbly submit, it is not necessary to examine the fairness, legality and validity of the enquiry and the findings of the enquiry officer as stated earlier, the entire issue eminate from the circular dated 21-12-1994 requiring the workmen to report for third shift working is not as per the procedure provided in the Certified Standing Orders and the company of its own withdrew the said notice goes to show that they were at fault and consequently all the matters connected, related, need to be treated as closed and no action is called for against the workmen who rightly agitated against the arbitrary notice put up by the company.

5. Justice R. S.Verma by Part-1 Award dated 14th August, 1996 concluded as follows in paragraph I8 and 19, 20 and 21.

18. I have considered the rival contentions. This is true that the union did not take this plea either in its written statement of claim or in its rejoinder. But this is purely a legal plea and there is no estoppel against a plea in law. Now, a bare look at the relevant portion of clause 21 of the certified standing order, reproduced above goes to show that the order of dismissal should have been passed by a Director and the dismissed workmen had a right of appeal before the Managing Director. In passing order of dismissal himself, the Managing Director has undoubtedly deprived the two workmen of their valuable right of appeal. In doing this, a term and condition of service between the employer and employee has been violated. I may add that right of appeal is valuable right. It gives the workman right to put across his point of view to a superior authority, other than the one passing the order of dismissal. Hence, I am of the view that enquiry in the present case has been vitiated due to violation of the aforesaid clause 21. The issue is denied accordingly.

19. The management in its reply has specifically pleaded that in case the enquiry is held to be vitiated, the management be given an opportunity of proving the charge before the Tribunal. In view of the opinion expressed by me, I need not decide issue no. 3 just now and deem it proper to grant opportunity to the management to prove its charge against the two workmen by leading evidence before this Tribunal.

20. The management may file affidavits of its witnesses within three weeks of receipt of this order and may supply the copies of such affidavits to the union within the said period. The management shall keep present its witnesses for cross-examination before the Tribunal at Bombay on 14-10-1996. In case, any of the witnesses required to be summoned, steps be taken expeditiously in this direction.

21. Union and the management be duly informed of this order.

6. Thereafter, a review application was filed by the company. The review application was allowed by judgement dated 12-6-1997 passed on Miscellaneous Application No. 11 of 1996 arising out of CGIT 1/49 of 1995. Paragraph 19, 20 and 21 were substituted by new paragraphs 19 and 20.

"19. Now, the parties shall address themselves on the question if the findings of the Disciplinary Authority are perverse and not based upon any acceptable evidence.

20. Put up on 31st August, 1997 for hearing the parties on the said question."

7. The writ petition 262 of 1999 filed by the Union against the company for setting aside the judgement dated 12-6-1997 was rejected by Shri Justice N. J. Pandya on 9th March, 1999.

8. From the above recital facts, it is clear that this tribunal now required to give a finding according to paragraph 19 of the amended reproduced 6 above.

9. After hearing the counsel for the parties and after going through the enquiry papers this tribunal comes to the conclusion that the findings recorded by the enquiry officer are based on appreciation of evidence. They are not perverse. The enquiry proceedings were held ex parte and workmen took a great risk by not contesting the charges levelled against him. It is difficult to come to conclusion that the findings recorded are perverse. It may be fairly pointed out that the learned counsel for the Union did not challenge the findings but has taken to a legal argument which shall be dealt with in the sequel.

10. The learned counsel for the union further argued that in the first part of the part I Award remained intact, the effect that the order of dismissal should have been passed by a Director and an appeal lay in each case against the order dismissal to the Managing Director. Both the workmen were deprived of their right of appeal given to them in clause 21 of the Certified Standing Orders. For this reason, the order of dismissal in both the cases have to be set aside, even though, the tribunal reviewed its part-I award giving opportunity to the management to prove charges and substituted instead with a direction that this tribunal was required to give its findings on the issue of perversity of the findings, if any recorded by the enquiry officer. It was contended even if the enquiry report was not set aside, the order of dismissal could not be upheld because the workmen were deprived of their right to appeal in terms of clause 21 of the Standing Orders applicable to the workmen. The Part-I award dated 14th August, 1996 was still good to that extent and this tribunal cannot over look it or go behind it. The learned counsel for Union brought to notice of this tribunal the decision of Supreme Court in Surjeet vs. Chairman and Managing Director, United Commercial Bank 1995 I LLN 840, and Jyotish Chandra Biswas vs. Life Insurance Corporation of India 2001 (1) LLN 643 (Calcutta High Court).

11. The learned counsel for the company on the other hand contends that once this tribunal came to the conclusion that enquiry was held in accordance with the principles of natural justice and the findings of Enquiry Officer were not liable to be challenged on the ground of perversity or otherwise, this tribunal could exercise its power on the question of quantum of punishment under section 11 A of the Act. It was contended that in view of review order which was confirmed by the High Court this tribunal cannot hold that entire enquiry proceedings are vitiated. The ex parte enquiry was not even challenged by the Union as was clear from its rejoinder. Once this tribunal came to this conclusion then it can pass appropriate order if the workmen were rightly dismissed for their proved misconduct.

12. Having heard the counsel for the parties this tribunal is of the opinion that it is bound by the judgement dated 14th August, 1996 as it stands modified by judgement dated 12-6-1997 allowing the review application. It is apparent that paragraph 18 of the part award dated 14th August, 1996 remained intact. The conclusion in paragraph 18 that the enquiry in present case has been vitiated due to aforesaid violation of clause 21 was not modified by the order passed on review application. On the other hand it was recorded in order dated 12-6-1997.

"Here I may in all fairness to Mr. Shah state that he does not challenge that part of the award by which I have held the disciplinary proceedings to be vitiated on the ground that right of appeal of the delinquent workmen has been taken away". This tribunal has now to proceed further on the assumption that disciplinary proceedings are vitiated because despite finding recorded today that enquiry report is not based on perverse findings. The finding recorded herein before does not in any way affect the conclusion reached in paragraph 18 of the part award dated 14-8-1996. An analogy may make the matter clear. The findings recorded by the enquiry officer fall as of the earlier step if we compare the disciplinary proceedings to a stair case. Issuance of a charge sheet may be the first step. The recording of findings in an enquiry report may be an important step but it is not a final step in a disciplinary proceedings. Even after sending of enquiry report, the disciplinary proceedings remain alive till the final order capable of being passed is spelt out. Where the standing orders provided for an appeal against the order of punishment the order in appeal will be the final order. Where no appeal is provided for the order of punishment should be held to be the final order. Here in the part award dated 14 August 1996, disciplinary proceedings have been found to be vitiated because the final order of dismissal was passed by the appellate authority depriving the workman of his right to appeal. The passing of the order is at higher step in the stare case of disciplinary proceedings and consequently there is no change in the legal position by saying that the earlier step was right because the enquiry was good in

valid. Therefore, the conclusion is that the disciplinary proceedings are vitiated at stage of passing the two orders of dismissal is not liable to be re-opened.

13. This tribunal is faced with a piquant situation. The adjudicatory dilemma is how much weight be given to the misconduct of the two workmen found guilty in an ex parte enquiry, which they misguidedly boycotted, against the conclusion in law that the workmen were denied their valuable rights of appeal as per the existing Part-1 Award dated 14-8-1996. It is a fact of life that the tangibles cannot be weighed against the intangibles. No judicial balance can weigh them and find out the difference in weight. If this tribunal says that the workmen were guilty, and they deserve the punishment, as was awarded to them, it would be making the same mistake, as was done by the company. It should be remembered that section 11-A of the Act does not confer upon this tribunal powers exercisable by an appellate authority under clause 21 of the Standing orders. In the case of workmen of Firestone and Rubber Company Vs. Management 1973 1 LLJ 278 had in paragraph 29 at page 293 inter alia stated that law prior to introduction of section 11 -A could be summed as follows:

> "When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or malafides."

The Supreme Court was of the view that by introduction of section 11 A of the Act, the power of adjudication as stood prior to its introduction, was enlarged only to limited extent where the enquiry was found to be good and valid. If the tribunal in exercise of its adjudicatory power, came to the conclusion that there was no reason to interfere with the conduct of the enquiry, there still remained power consider if the punishment was justified. The power to award suitable punishment can be inferred from section 11-A of the Act. It is obvious, therefore, that this adjudicatory tribunal lacks the full powers of an appellate authority. Consequently, it can be said that by introduction of section 11-A of the Act this tribunal can exercise an additional (which could also be exercised by the appellate authority) adjudicatory power of interfering with the punishment awarded to the workman. Section 11-A cannot be had to be a full substitute for the right appeal conferred by clause 21 of the Standing Orders. This tribunal cannot take away the right of appeal by exercising its powers under section 11 A of the Act on the question of punishment. In the opinion, of this tribunal, the right of appeal is a valuable right and cannot be brushed aside on the ground that the internal appeal provided by clause 21 is usually rejected as a matter of course. There is no reason to draw a presumption either in favour of management or the workman regarding possible result of appeal. All that can be said that two workmen lost the chance of succeeding in appeal when the appellate authority passed the orders. When the right of appeal is violated in the manner done by the company, then the correct order is to set aside the order of dismissal. This intangible right of appeal is of great importance. In the case of Sujit Ghosh Vs. Chairman and Managing Director (supra) it was treated as such by the Supreme Court and the order of dismissal was set aside. A similar view was taken in Jyotish Chandra Biswas Vs. Life Insurance Corporation (supra) However, this tribunal has ample powers not to grant reinstatement under the facts and circumstances of the case. A number of factors can be taken into consideration. Firstly, workmen themselves had boycotted the enquiry, thereby, they gave the impression that there was an element of factual foundation in the charges framed. Secondly, the act of workmen in behaving in threatening manner could not be dubbed as a legitimate union activity for solving an industrial dispute. Thirdly, the period that has expired since the dismissal of the workmen. Consequently, guided by two decisions, this tribunal that workmen are entitled to compensation instead of reinstatement. However, no material has been placed in the enquiry proceedings, regarding actual wages earned by the workmen. Under these circumstances, for the purpose of compensation this tribunal takes the view that the workman shall be paid compensation on the foundation that they were retrenched on the date of passing of the order of dismissal in both cases, i.e. on 14-9-1995. The company shall calculate the compensation as provided by section 25(b) of the Act i.e. for every completed year of service or any part thereof in excess of six months the workmen shall get compensation equivalent to 15 days of average pay. The company shall also pay 6% interest per annum on the amount so calculated to each workmen Pradeep Vs. Talaulikar (Clerk Grade-II) and Shabha P.Gaonkar (Mechanic) from the date of orders of dismissal passed against till payment is made.

Accordingly, this tribunal answers this reference by saying that the order of dismissal dated 14-7-1995 in each case of the workmen are liable to be set aside as illegal and instead of reinstatement the company shall calculate and pay to workmen compensation as detailed in paragraph 13 of this award.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 405.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 1/10/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-01-2003 को प्राप्त हुआ था।

[सं. एल-31011/18/98-आई. आर. (एम.)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 405.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/10/1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Mumbai Port Trust and their workman, which was received by the Central Government on 2-1-2003.

[No. L-31011/18/98-IR(M)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present :

Shri Justice S.C. Pandey, Presiding Officer

Reference No. CGIT-10/1999

Parties :

Employers in relation to the management of Mumbai Port Trust

And

Their Workmen

Appearances :

For the Management : Shri Nabar, Adv.

For the Workman : Shri Wagh

State : Maharashtra

Mumbai, dated the 17th day of December, 2002

AWARD

1. This is a reference under Section 10(l)(d) read with Section 2 A thereof of the Industrial Disputes Act (the Act for short) made by the Central Government for adjudication of the Industrial Dispute between the Transport and Dock Workers Union the union for short and the Mumbai Port Trust (The Port trust for short). This tribunal is required to adjudicate upon following question referred to it by the Central Government.

> "Whether the action of the management of Mumbai Port Trust in dismissing Shri Kisan Laxman Sakpal from the services of the Port Trust is justified? If not, to what relief the workman is entitled to?"

2. The undisputed facts of this case are that Kisan Laxman Sakpal (the workman for short) was employed as a B category Mazdoor with the Port Trust in its Docks Department from 1982. He was a class IV employee, he was charge sheeted under regulation 3(7) of Bombay Port Trust Employees (Conduct) Regulation, 1976 (The Regulation for short). An enquiry was held under regulation B read with regulation 12 of the Mumbai Port Trust, Employees Classification and Central Appeal Regulation, 1976 (the classification and Control Regulations for short). It was alleged in the charge sheet dated 26-6-1996 that Senior Police Inspector, Donar Police Station, Mumbai had given the information to the effect that workman was arrested on 26-12-1993 for an offence registered against him under Sections 498A and 306 Indian Penal Code for investigation in the Police Station. A charge sheet filed against the investigating officer stated to have found that he was harassing his wife continuously after taking liquor. On 26-12-1993, the workman was drunk and his wife, being aggrieved by continuous harassment poured kerosene on her body. She expired on 29-12-1993. On these facts the workman was charge sheeted under Regulation No. 3(7) which reads as under :

> "Every employee shall be expected to maintain a reasonable and decent standard of conduct in his private life and not bring discredit to his employer by his misdemeanour. In case where an employee is reported to have conducted himself in a manner unbecoming of an employee of the Board as, for instance by neglect of his spouse and family action may be taken against him on that score."

3. An enquiry was held against the workman after serving him the charge sheet dt.26-6-1996. He was given the statement of allegations as well as the documents and also lie list of witnesses numbering 10. The workman had filed the reply to the charge sheet which was not accepted. He was given a defence representative, by name Shri. Y.S. Rane, Asstt. Secretary of Transport & Docks Worker Union. The Management examined PW1 R.S.Chavan, brother-in-law of the workman, PW2 P.S.Thorat, the Station Duty Officer, PW3 Smt. Mayawati Shanker Chavan, a relative of the wife of the workman, PW4 Shankar Mauruti Chauhan a relative of the wife Laxmibai, PW5 Smt. Nanda Shamrao a neighbour, PW6 Baria Bai Shrirang Chawan, the mother-in-law of the workman for proving the charge framed against

him. The workman entered the witness box and he too was examined and cross-examined. Thereafter, the enquiry was closed. The enquiry report went against the workman. Ultimately the order of dismissal with effect from 09-6-97 was passed by the competent disciplinary authority. The appeal filed by the workman was rejected on 08-1-1998 by the appellate authority. Thereafter, the workman raised the industrial dispute through the union for conciliation. On failure of conciliation, the matter has been referred to this tribunal.

4. The statement filed by the Union is based on the contention that the evidence in the enquiry did not prove the charge framed against the workman and further that the punishment imposed upon the workman is disproportionate to the charges proved.

5. In the written statement the allegations made in statement of claim were denied. It is asserted that the charges are proved and that punishment is proper.

6. The union filed a rejoinder and reiterated the claim.

The follwing three issues were framed by the tribunal by way of preliminary issues :

(i) Whether there was violation of principles of natural justice during the course of enquiry by the Enquiry Officer ?

(ii) Whether the framing of charge under Regulation 3(7) of the Mumbai Port Trust Employees (Conduct) Regulation, 1976 and consequent termination of services of the workman was justified even if it be assumed that the findings of the Enquiry Officer are correct?

(iii) Whether the findings recorded by the Enquiry Officer are perverse?

In the opinion of this tribunal it is necessary to consider the Issue No. 2 first because it goes to root of the matter. It is not in dispute before me that the Mumbai Port Trust is governed by Major Port Trusts Act, 1963. (The Act of 1963 for Short) Section 28 of the Act confers power on the Board of trustees to frame regulations. The residuary clause (e) of Section 28 of the Act 1963 clothes the Board to frame regulation on any matter which is incidental to or necessary for the purpose of regulating the appointment and the conditions of the services of the employees. The clauses (a), (b), (c) and (d) of Section 28 of the Act of 1963 are specific and a bare reading of those clauses shall reveal, that they do not provide for the conditions of service of an employee who is liable to be charge sheeted for a misconduct resulting in punishment. Therefore, this tribunal takes it that the Board or the Central Government framed Bombay Port Trust Employees (Conduct) Regulations, 1976 in exercise of its substantive power under Section 28(e) of the Act of 1963. The general power to make regulations by Sections 123, 125 and 126 of the Act of 1963. However, seat power for governing the service conditions of the employees Board is Section 28(2).

9. The Board had framed certain regulations subtitled as "General" under clause 3 of the regulations. These sub-regulations are curious amalgam. The regulation No. 3 requires the employee to maintain absolute integrity and devotion to duty. The regulation No. 3(2) requires that an employee of class I Post shall not permit his son, daughter, or any other dependent to accept employment with any firms or company with which he is dealing as an employee without previous sanction of the Chairman or in case of urgency the liberty given to the persons mentioned in regulate to get employment provisionally subject to permission of the Chairman. The clause 3(3) of regulation require intimation to be given to chairman about the acceptance of employment by a member of the family of a Class I or Class II employee in a firm or a company. The sub-clause 4 of the Regulation No. 3 directs that an employee shall desist from dealing with a case relating toward of a contract or exercise patronage in favour of a firm or company in which his child or dependent is employed. The sub-clause 5 of Regulation No. 3 prohibits bidding at auctions arranged by or on behalf of the Board. The sub-clause 6 of Regulation No.3 prohibits participation by an employee in proselytizing activity or direct or indirect use of his position and influence such activities shall be objectionable. Sub-clause 7 of Regulation No.3 is same and it has already been reproduced. The words (neglect of his spouse and family) substituted by notification of 10-9-80. The sub-clause 8 thereof requires the employee the fact of arrest or conviction to his superiors in writing.

10. The Board had clause 1A to Regulation 3. Under that clause appear to be more specific. They are as follows :

(1A) No Employee shall—

(i) act in a manner prejudicial to the interest of the port;

(ii) remain absent without sanctioned leave or be irregular or unpunctual in attendance;

(iii) neglect work or show negligence in the performance of work including slowing down of work;

(iv) abet, connive at or attempt or commit theft, fraud or dishonestly in connection with Post Trust work or property;

(v) commit frequent repetition of any act or omission for which a fine may be imposed;

(vi) act in insubordination or disobedience, whether alone or in combination with others, or any lawful or reasonable order of a superior;

(vii) abet or attempt to abet any act which amounts to misconduct;

(viii) cause loss of or damage to Port Trust property or property in the custody or lying in the premises of the Port Trust or interfere with any safety device installed in the Port Trust premises;

(ix) take or give bribes or any illegal gratification or any acts of abetment in connection herewith;

(x) assault or intimidate a superior officer or officers or fellow employee or employees of the Port Trust;

(xi) gamble or bet or attempt to do so on Port Trust premises;

(xii) fail to observe roles or regulations;

(xiii) make false or misleading statements;

(xiv) take proceedings in any Court against any fellow worker in respect of any dispute or offence non-cognisable by the police that may happen on Port Trust premises or in connection with Port Trust work, without obtaining the previous sanction of the Chairman, and

(xv) behave improperly such as quarrel or sleep while on duty or behave in a riotous, disorderly or indecent manner or commit any act subversive of discipline.

11. The question that has to be asked is if the Board of Trustees could frame a regulation like the regulation No. 3(7) in exercise of power under Section 28 (e). What is the criterion for judging reasonable and decent standard of conduct in private life? What is meant by bringing discredit to employer by his misdeamenour? What the conduct un-becoming of a employee? What is the meaning of the words "neglect of his spouse and family"? Do words added by way of example govern the members of the family as defined in Regulation 2 (e). The difficult question is Does the example correctly signify the substantive clause and more important, if any enquiry can be held for breach of regulation No. 7. How far the employer can enter into private conduct of a person on the provisions like "maintain reasonable and decent standard in his private life? Does it refer to social relations? Does it relate to economic standard? Would the employer pay for maintaining expected standard also to a mazdoor of B class? Does a person bring discredit to an employer by neglecting his spouse or family? How far the employer enter into domain of family law?

12. In the opinion of this tribunal the Regulation No. 3(7) is very general in nature. It does not define any specific misconduct. The words "for instance by neglect of his spouse and Family" are obviously added by way of illustration. The purport of Regulation 3(7) is to take action for not maintaining decent standard of conduct in private life which may amount to misdemenour and bringing discredit to the employer thereby or for conduct unbecoming of an employee. Forgetting the example for a moment, because it slall be dealt with in the next paragraph, the case of A.L. Kalra vs. PEC India Ltd., 1984 II LLJ 186 the Supreme Court was required to deal with the case of employee who was charged for (i) not maintaining absolute integrity (ii) for doing an act which is unbecoming of a public servant as per rule (4) applicable to the employee. The Supreme Court pointed out that above provision in Rule 4 made by that company was vague and of general nature. Such general rules framed for punishment of an employer do expose to employees to vagries of subjective evaluation. The Supreme Court stated in paragraph 22 at page 193.

"What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that an *ex post facto* interpretation of some incident may not be camouflaged as misconduct. It is not necessary to dilate on this point in view of recent decision of this Court in M/s. Glaxo Laboratories (I) Ltd. vs. Presiding Officer, Labour Court, Meerut & Others 1984-1 LJ 16, where this court held that 'everything which is required to be prescribed has to be prescribed will precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say *ex post facto* that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty". It is true that Supreme Court further pointed out the rule therein did not say that violation of Rule 4 would be a misconduct. The situation may not be same here but it is not different that the Regulation 3 is described as general and amended Regulation 3(A) are specific. The regulation do not define misconduct. It can, however, be inferred from the content of Regulation 3(A) they were meant to be misconduct subject to penalties under classification and control and appeal regulations.

It has been argued that this tribunal cannot ignore the words "for instance by neglect of spouse and family" while interpreting Regulation No. 3 (7). It is true that while interpreting a regulation, rule, or an enactment, every word has to be read. This is the normal rule of interpretation. However, when something is by way of an example or illustration, this rule would not apply if the Court or tribunal is of the view that illustration cannot fulfil the object for which the regulation was made. If we can confine regulation 3(7) for taking action only in cases of neglect of spouse and

family then the general words of that regulation are unduly curtailed. We shall also omit "for instance" used in the regulation. It is well established that an illustration is to be used an aid to interpretation. It can neither curtail, nor can it expand the substantive portion of a section, rule or regulation. Therefore, this tribunal cannot confine the violation of Regulation 3(7) to the facts constituted by illustration. If the illustration is omitted the general regulation general is hit by vice that has been pointed out in the case of A. L. Kalara vs. PEC. The true facts of this case are that workman has been found to have given to habitual drinking in private. This caused domestic trouble and he was given to harass his wife. The enquiry officer did not appear to have found that immediate cause for suicide was that the workman had actually given her beating on day of suicide attempt. This can be inferred from paragraph (i) though it appears the word "not" has been accidentally appears to have been omitted. The use of word "though" and "only" point out in that direction. For ready reference paragraph 1 is being reproduced.

"The evidence produced at the enquiry proceedings when viewed in totality, is considered to be sufficient to prove that the CSE was having drinking habit and that Smt. Laxmibai was being harassed/beaten by the CSE, though it does conclusively sufficiently prove that because of harassment etc. by the CSE only, she got burnt herself and committed suicide".

14. This tribunal is of the opinion on the basis of the ratio of decision of Supreme Court A.L Kalara vs. PEC (supra) that criterion like "reasonable and decent standard in private life" or "bringing discredit to employer" by misdoemeanour are doing an act "unbecoming of an employee hand" are very subjective in nature. They shall differ from person to person and case to case. In absence of precision and their general nature, it is held that clauses 3/7 of the regulation was made only *in terrorem* and not with view to enforce them. The Supreme Court has also held in the case of A. L. Kalara that action taken under such general clauses would be violation of Article 14 of the Constitution. The Port Trust being an authority constituted under Major Port Trust 1978 is covered by the Article 12 of the constitution. It cannot, therefore violate Article 14 of the Constitution. The doctrine of reading down an act, rule, or regulation to make it constitutional is not unknown. It has been used several times.

This tribunal is further of the view that Regulation 3(7) of the Regulations cannot be framed under Section 28(c) of the Act of 1963. It is one thing to control the service conditions of an employee. It is another thing to control the private conduct of an employee in the garb of controlling service conditions. The regulations cannot made or controlling the private conduct of an employee unless they have bearing upon the conduct of business for which the workman is employed. There was not an iota of evidence on record that the workman was given to drinking during duty hours. Nor was he seen drinking publicly. His wife had lived with him for ten years. All these years apparently no complaint was lodged anywhere. The workman could not be held guilty of abetting suicide because he could not have foreseen it. There is no evidence of economic neglect on his part. Therefore, merely because wife of the workman committed suicide or that he was charged with criminal offence not directly relating to his employment, a charge could not have been laid under Regulation 3(7) of the regulations. Even if the neglect of spouse and family could be read in the regulation then also it should be confined to "economic neglect" and nothing more. No evidence was led to show that workman did not maintain his wife and children and neglected them. There is no evidence that he did not maintain the same standard of living as a B class majdoor does. Then only way the Board could be aggrieved by his misdemeanour that he was charged with a criminal offence. In the opinion this tribunal if this be the grievance of the Port Trust then it should have awaited the result of criminal trial.

16. This tribunal is further of the view that the Trust acted "with undue haste" within the meaning clause 5(1) of Fifth Schedule which amounted to unfair labour practise on the part of employer. The workman was being tried for the offences registered against him under Section 498A and 306 IPC. The entire enquiry is based on the investigation done by the police. Was it not possible to await the verdict of the Criminal Court ? The conduct of the workman was related to his private life. It did not relate to his work. Therefore, the workman could have been allowed to serve till the Criminal Court convicted him. It was unfair to deprive the workman service of his livelihood. Another consequence of the order was that the workman must have rendered without service of any income must have been forced to neglect the remaining members of his family which the Regulation No. 3(7) tried to safeguard . There is thus an element of an irony on the fate of the workman, he is forced to neglect his family by order of dismissal which Board was trying to prevent under Regulation 3(7).

17. It should be remembered that the Federal Court in the case of Western India Automobile Association vs. Industrial Tribunal, (1949) I LLJ 245 pointed out that adjudication done by this tribunal is not strictly in accordance with the law of master and servant. The award of the tribunal may contain the provisions for settlement of a dispute which no court shall order it to be bound by ordinarily law but the tribunal is not fettered any way by these limitation. In the 919500 I LLJ 921 at page 928 case Bharat Bank Ltd. vs. its employees the following observations were made by Justice B. K. Mukherjee.

"In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer lights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

The same view was taken in Rohtas Industries Ltd. vs. Brynanded Pandey, (1956) 11 LLJ 444, Premier automobiles Ltd.. vs Kamalkar Shantaram Wadke (1975) 11 LLJ 445. The view is well established and has been followed through out. It must be remembered unlike a Civil Court an industrial tribunal passes an award. The dispute may be individual but is likely to affect all workmen. The workmen are parties to this dispute through their union of settlement of this all the future disputes of this. This tribunal is, therefore, of the view that clause 3(7) of Regulations was made in terrorem and not with view to create a legal obligation. It is such not enforceable. Therefore, the workman could not be charge sheeted on the basis of Regulation No. 3(7). The result of the aforesaid discussion that this tribunal holds that the workman could not be punished on the basis of the allegations in the charge sheet dated 26-6-1996 and therefore, the charge select dated 26-6-1996 was illegeal and void. Consequently, the enter enquiry as well as the order of dismissal with effect from 09-6-1997 is bad in the eyes of law. Accordingly, the issue No.2 is decided. In view of this conclusion no further enquiry is called.

The workman is entitled to reinstatement in service and since the entire proceedings were illegal the workman shall get back wages.

18. The question referred to this tribunal is by saying that the action of the management of Mumbai Port Trust in dismissing the workman Krishan Laxman Sapkal from its service cannot be Justified. It is void and illegal. The workman is entitled to re-instatement as directed in. It is however, made clear that in the event of conviction of the workman the management of the Port Trust shall be free to take such action. Nor would the award passed by this tribunal prevent the Port Trust from suspending the workman during pendency of trial if the conditions of this services allows the Port Trust to do so. But in that case be entitled to subsistence allowance admissible under the conditions of service.

S.C. PANDEY, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 406.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. पी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I,मुम्बई के पंचाट (संदर्भ संख्या 37/99 को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2003 को प्राप्त हुआ था।

[सं. एल-30012/157/98-आई. आर. (सी.-I)]

एस. एस गुप्ता,अवर सचिव

New Delhi, the 7th January, 2003

S.O. 406.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/99) of the Central Government Industrial Tribunal -I Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BPCL and their workman, which was received by the Central Government on 03-01-2003.

[No. L-30012/157/98-IR(C-1)]

S.S GUPTA, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

PRESENT:

Shri Justice S.C. Pandey, Presiding Officer

REFERENCE NO. CGIT-37/1999

Parties :

Employers in relation to the management of Bharat Petroleum Corporation

And

Their Workmen Shri. D.P. Chauhan

Appearances :

For the Management	:	Mr. R.S. Pai, Advocate
For the Workman	:	Absent
State	:	Maharashtra

Mumbai, Dated the 23rd day of December, 2002

AWARD

1. This is a reference made by the Central Govt. in exercise of its powers under clause (d) of Sub-section 1 and Sub-section. 2-A of Section 10 of the Industrial Disputes Act 1947 (the Act for short) questioning the action of the termination of the services of Dinesh Premji Chauhan (the workman for short). The terms of the reference are as follows :

2. The workman was appointed on 26th June 1990 as a Sweeper in Ballard Estate establishment of the

Corporation. He was confirmed on 1st August 1991. It is alleged by the workman on his statement of claim that he had a nervous break down in the last week of June 1992. He was under treatment of experts between June 1992 to till first week of October 1992. After obtaining fitness certificate dated 8th October 1992, he reported back on duty. Thereafter, the workman reported daily but he was not taken. He was told by Ms. Sujata Chowgule and Mr. Jadhav that he could be taken back in service only after the Central Govt. ordered him to restore him to service. The workman stated that he approached the Central Labour Commissioner in 23rd December 1992 but no dates of hearing were fixed. The workman was not allowed to join, and whenever he approached the officials of the Corporation, it was said that he shall not be allowed to join unless there was any order from the Central Govt. It is alleged by him that he submitted a certificate from J.J.Hospital that he was declared fit on 16th March 1995. The workman stated that he was assured that he shall be given a job so that he waited patiently till May 1998. Thereafter he approached the Labour Commissioner. The Labour Commissioner could not residue the dispute because the Corporation took a non-co-operative stand. The workman claimed that the termination of his services amounted to retrenchment and therefore termination of his services of the workman is illegal. He claimed back wages and continuity of services.

3. The Corporation took the stand that reference is delay as it was made after 7 years from the date of alleged cause of action. The workman remained absent from 29-6-1992 without leave. The letters sent to the workman on 15-7-1992 and 28-8-1992 were not replied to. The registered letter dated 15-7-1992 was returned unclaimed. The workman had remained absent 134 days. Therefore, his services were terminated in November 1992. The Corporation denied any knowledge about the illness of the workman. It denied that the workman ever reported to work after 29-6-92. It denied that workman approached the Central Labour Commissioner on 23 December 1992. It asserted that the workman approached the Central Labour Commissioner in May 1998. Therefore, there was delay of 7 years. It was the stand of the Corporation that it was not necessary to hold an enquiry as the workman remained absent for 134 days without permission. All other allegations made in the Statement of claim were denied.

4. The workman filed his rejoinder and the reiterated the stand taken by him in his written statement.

5. The workman was present on 19-9-2002. Thereafter, the workman remained absent. As the case was filed for filing the documents of the Corporation 18-7-2002 and 07-8-2002, the workman remained absent on these days. The case was adjourned 16-8-2002. It was ordered that notices be issued to workman as he was absent. On 28-8-2002 again he remained absent. The case was adjourned with a direction to issue notice for appearance of workman on 25-9-2002. On 25-9-2002 and 21-11-2002 it was again ordered that notices be issued for appearance on next date. On 02-11-2002 a notice was sent immediately that on next date the case shall be held exprate on 18-12-2002.

6. Nobody appeared for the workman despite service as indicated by return of the acknowledgement signed by him. This tribunal proceeded ex-parte as the counsel for Corporation did not want to lead any evidence.

7. The learned counsel pointed out that workman himself document No. 4, the dismissal order dated 09-11-1992. Therefore, it must be presumed that workman had knoledge about order dated 09-11-1992. The workman remained ex-parte to prove his case. There is unexplained delay in making the refrence. It is 7 years. Therefore, this tribunal should not set aside the order of dismissal on delayed refrence.

Having heard the counsel for the Corporation, this tribunal is of the opinion, that there is considerable force in the contention of the counsel. the workman has not appeard and it does not appear that he wants to contest the reference. In absence of any evidence on record regarding delay, as well as on merits, this tribunal is compelled to hold that the workman was unable to prove that reference was not and that the termination of his services was not justified.

Accordingly, this tribunal answers the reference by saying that the termination of services of Dinesh Premji Chauhan is justifiable under the facts and circumstances of the case. The workman is not entitled to any relief.

S.C PANDEY. Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 407.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टिस्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II धनबाद संदर्भ संख्या 188/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/01/2003 को प्राप्त हुआ था।

[सं. एल-20012/399/97-आई. आर. (सी.-1)]

एस. एस गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 407.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 188/98) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Tisco and their workman, which was received by the Central Government on 03/01/2003.

[No. L-20012/399/97-IR(C-1)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2 AT DHANBAD

Present :

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 188 of 1998

PARTIES : Employers in relation to the management of Tisco. and their workman.

APPEARANCES :

On behalf of the workman : Shri Ram Ratan Ram. Authorised representative

On behalf of the employers : Shri G. Prasad Advocate.

State: Jharkhand : Industry: Coal.

Dated, Dhabad the 10th December, 2002.

AWARD

The Govt. of India, Ministry for Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D Act, 1947 has referred the following disputed to this Tribunal for adjudication vide their order No. L-20012/399/97-IR(C-I), dated the 27th August, 1998.

SCHEDULE

"Whether the action of the management of M/s. TISCO in dismissing the services of Sri Kailash Mandal, Belt Cleaning Mazdoor is justified? If not to what relief the concerned workman is entitled?"

2. The case of the concerned workman according to the W.S. submitted by the concerned workman in brief is as follows:—

The concerned workman in his W.S submitted that he was a permanent employee under the management and posted at 6/7 Pits Colliery of Jamadoba Group of M/s. TISCO. Ltd. His Ticket No. was 46517. He submitted that the management issued a chargesheet to him on 12-5-93 vide chargesheet No. 42/93 dt. 12-5-93 with some false and baseless allegation against him. Accordingly he submitted his reply to the chargesheet but as the management was not satisfied with the reply given by him initiated domestic enquiry against him. Accordingly the enquiry officer conducted domestic enquiry in utter violation of the principle of natural justice and submitted his report to the management. He alleged that he was not given full opportunity to cross-examine the witness with a view to defend his case. The E.O. also did not supply copy of the enquiry proceeding and report to him. Even the disciplinary authority did not supply copy of the enquiry proceeding report of the enquiry officer before passing final order of dismissal. They also did not consider necessary to call for explanation from the concerned workman before he was dismissed by the management and for which he was deprived of representing his case not only before the disciplinary authority but also before the Appellate authority which amounts to the violation of the principles of natural justice. Accordingly the concerned workman raised this industrial dispute which ultimately resulted reference to this Tribunal for Award. The concerned workman accordingly submitted his prayer to pass Award directing the management of M/s. TISCO to reinstate him with full back wages.

3. The management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegation which the concerned workman asserted in his W.S. The management submitted that the concerned workman was appointed on 24-6-74 as Belt Cleaning Mazdoor and his token No. 46517. They submitted that the concerned workman developed the habit of absenting from his duty without permission or information frequently and accordingly on different occasion he was issued with the chargesheet namely chargesheet No. 203 dt. 25/26-3-80, No. 254 dt. 2/3-11-80 No. 259 dt. 10/12-11-80 and No. 70 dt. 17/23-5-84. In all the occasions the enquiry was held against him and he was found guilty and for which the management ordered miner punishments to him from time to time. Inspite of punishing the concerned workman he did not reform himself. On the contrary he committed serious misconduct of righteous and indecent behavior with his superior and again a chargesheet was issued to him vide C/S No. 131 dt. 19/20-12-85 and after holding proper enquiry in accordance with the principles of natural justice. The charges levelled against him was established and he was dismissed from his service with effect from 20-1-86. Thereafter the concerned workman approached the various Union leaders for his re-employment and accordingly his case was considered and he was re-employed on 10-3-89 on his previous job. Even after reinstatement to his service the concerned workman did not mend his character and again for committing misconduct of leaving duty place without permission he was chargesheeted vide shargesheet No. 20 dt. 15-6-90 and was warned and suspended for one day only thereafter on 11-5-93 while the concerned workman was on duty as Belt Cleaning Mazdoor at 6/7 Pits colliery of the company in A Shift which commenced at 9 A.M and ended at 4 P.M. he was deputed to work in the road-header section of the mine in the same pit. The concerned workman reported for his duty at 8.15 A.M. and got his attendance marked at Attendance Cabin of 6/7 Pits colliery but did not go down the mine after collecting Cap Lamp from Lamp Carbine room. Shri C.H. Diwakar, Asstt. Divisional Manager (O) of 6/7 Pits colliery found the concerned workman on the surface near the Attendance Cabin at about 10.20 A.M. during the course of his inspection in drunken state and for which he was advised not to go down the mine during that shift. As a result the concerned workman got himself

seriously agitated and caught hold of the arm of Shri Diwakar and threatened and abused him with filthy language. For such serious misconduct the management issued a chargesheet as per clause 19(5) of the certified Standing Order to the concerned workman vide Chargesheet No. 42/93 dt. 12-5-93. He was kept under suspension during enquiry proceeding. By the charge sheet the concerned workman was directed to submit his reply but he did not consider necessary to give reply of the chagesheet and accordingly the management appointed the Enquiry Officer and fixed date of enquiry on 24-5-93. Due notice was given to the concerned workman and after receipt of the said notice the concerned workman submitted his reply. Thereafter departmental enquiry was conducted against the concerned workman. It has been submitted that full opportunity was given to the concerned workman to cross examine the management's witness and also opportunity was given fully to defend his case. In course of enquiry proceeding the concerned workman also did not raise any objection against the E.O or the procedure of enquiry adopted by him. Accordingly after completion of enquiry proceeding the E.O submitted his report holding the concerned workman guilty of misconduct. Thereafter the disciplinary authority considering the report of the enquiry officer accepted the same and dismissed the concerned workman from his service with effect from 27-5-93. They submitted that the action taken by the management was legal and proper and they did not commit any illegality which violated the principle of natural justice. In the result, the management submitted their prayer to reject the claim of the concerned workman.

4. The points to be decided in this reference are:–

"Whether the action of the management of M/s. TISCO in dismissing the service of Sri Kailash Mandal, Belt Cleaning Mazdoor is justified ? If not, to what relief the concerned workman is entitled ?"

5. DECISION WITH REASONS

It is seen from the record that prior taking to hearing of the case on merit hearing was also made to consider whether the domestic enquiry held against the concerned workman was fair, proper and in accordance with the principles of natural justice. Vide order No.22 dt. 2-7-2002 passed by this Tribunal it was observed categorically that the enquiry done by the E.O. against the concerned workman was fair, proper and in accordance with the principles of natural justice. Accordingly at this stage there is no scope at all to re-open this issue again. Here the point for consideration is whether the management has been able to prove the charges brought against the concerned workman and secondly if the punishment inflicted on the concerned workman by the disciplinary authority requires any modifcation or not according to Section IIA of the I.D. Act. Considering the submission of both sides there is no dispute to hold that the concerned workman was appointed as Belt Cleaning Mazdoor on 24-6-74. It is the claim of the concerned workman that the management with some malafide intention issued a chargesheet against him with some false and baseless allegation. He submitted his reply to the chargesheet denying the charges brought against him. It is seen that the chargesheet was issued against the concerned workman for committing misconduct as per clause 19 (5) of the certified standing order. The chargesheet which was issued to the concerned workman during hearing was marked as Ext.M-1. The contents of the charges are as follows:–

"On 11-5-93 you were in 'A' shift duty (i.e. from 8 A.M. to 4 P.M.) and you were deputed to work in the Road Header section of 6 & 7 Pits colliery.

It has been reported by Sri C.H. Diwakar, ADM(O) 6 & 7 Pits Colliery, that on 11-5-93 you booked your attendance at about 8.15 A.M. in the Attendance Cabin of 6 &7 Pits Colliery and thereafter neither you collected the cap lamp nor did you go underground.

Sri C. H. Diwakar reached the Attendance Cabin at about 10.30 A.M. where he saw that you were in a drunken condition under the influence of alcohol and hence Sri Diwakar advised you not to go to the underground but at this you got agitated and you caught hold of the arm and threatended and abused him stating that "TUM SAALA KAUN HAI HUMKO ROKNE WALA, HUM TUMKO DEKH LENGE." Subequently you were sent to the Tata Control Hospital, Jamadoba for your medical examination for alcohol.

The above act on your part amounts to indecent and riotous behaviour with your superior, which is a misconduct under clause 19(5) of the Co's certified Standing Orders. You are suspended pending enquiry with immediate effect."

The reply of the chargesheet given by the concerned workman was marked as Ext. M-2. The specific allegation of the management is that on 11-5-93 the concerned workman reported for his duty at 8.15 A.M. and got his attendance marked at the Attendance cabin of 6/7 Pits colliery but did not go down mine after collecting the cap lamp from the Lamp cabin. Mr. C.H. Diwakar, Asstt. Divisional Manager (O) of 6/7 pits colliery in course of his inspection at about 10.20 A.M. found the concerned workman on the surface near the attendance cabin. At that time the concerned workman was in drunken condition and accordingly Mr. Diwakar advised him not go to the mine during that shift. But the concerned workman became furious and caught holding the hands of the said officer threatended him and abused him in filthy language. The concerned workman thereafter was immediately sent to the hospital of the colliery for his examination and as per report of the medical officer it was found that the concerned

workman was in acute alcoholic intoxication. Accordingly, the management issued chargesheet against him vide Chargesheet No. 42/93 dt. 12-5-93. Thereafter the disciplinary authority appointed the E.O. with direction to take up enquiry against the concerned workman and accordingly the E.O. started enquiry against the concerned workman . It is seen from the record that full opportunity was given to the concerned workman to cross-examine the management witness and also to defend his case. The E.O. during enquiry proceeding examined C.H. Diwakar and recorded his statement. The said officer during his examination narrated all incidents in details in the matter of involvement of the concerned workman committing misconduct as per clause 19(5) as per Certified S.O. He further submitted that not only the concerned workman caught hold his arm but also threatened him and abused him by stating "TUM SAALA KAUN HAI HUMKO ROKNE WALA. HUM TUMKO DEKH LENGE". After recording the statement of the said officer i.e. Mr. Diwakar the concerned workman was allowed to cross-examine him but he declined to do so. The extract of Form C register showing attendance of the concerned workman in the A shift duty on 11-5-93 and the P.D. note No. 52 by which the concerned workman sent to Tata Colliery Hospital, Jamadoba on 11-5-93 and the patient record prescription and report of the concerned workman submitted by the doctor were produced while the statement of the said officer was recorded by the concerned workman. From these documents it transpires that the concerned workman put his attendance on that day for duty. He sent to Tata Company's Hospital, Jamadoba for his treatmaent and to see if the concerned workman was in toxicating stage or not. The report of the medical officer shows clearly that the concerned workman was in acute alcoholic stage at the time of his examination. The statement of the concerned workman was also recorded by the E.O. From his statement I find clearly that the concerned workman was in acute alcoholic stage. He was also cross-examined by the management and also admitted the fact. However this witness disclosed during his cross-examination that he was unable to remember if he abused the concerned workman with any filthy language or not as he was in drunken stage. The very admission of the concerned workman therefore shows clearly that inspite of putting his attendance he did not attend his duty. He was in acute intoxicating stage in the midst of his duty and he admitted that he took liquor duty hours. It is further seen that when the Asstt. Divisional Manager (O) Mr. Diwakar asked him not to go down the mine he became furious and after catching his hand threatended and abused him with filthy language Clause 19(5) of the Certified S.O. speaks as follows :—

> "Any employee may be suspended, fined or dismissed without notice or any compensation in lieu of notice if he is found to be guilty of misconduct, provided that suspension without pay, whether as a punishment or pending an enquiry shall not exceed ten days. The following shall denote misconduct.
>
> Drunkenness, fighting, rioters or disorderly or indecent behaviour."

No contrary evidence is forthcoming before this Tribunal in course of hearing that the charge brought against the concerned workman was with *maa fide* intention. It is seen that the management has well established the charge which has been brought against the concerned workman. It has been submitted by the concerned workman that the management neither issued requisite papers of the enquiry proceeding nor the report itself after completion of the enquiry and for which he was prejudiced seriously and did not find any scope to make his appeal and after order of dismissal passed by the disciplinary authority. The concerned workman get ample scope to submit petition before the disciplinary authority for supply of copies including the enquiry report but he did not do so. No evidence is forthcoming that he could not prefer any appeal before the Appellate Authority after his dismissal passed by the disciplinary authority for want of papers. There is no sign if at all the concerned workman took any step for making an appeal before the appellate authority. It is seen that after raising this industrial dispute he has taken this plea. In this connection the decision reported in 1994 Lab IC 762 S.C. may be taken into consideration. In the said decision. Their Lordship of the Apex Court has pointed out clearly when such claim of the concerned workman can be taken into consideration. The concerned workman has failed to establish that he was serious prejudiced for non-supply of the copy of enquiry proceeding and report in question. Accordingly at this stage I do not find any scope to say that the concerned workman got himself prejudiced for non-receipt of the enquiry report and other enquiry papers.

6. After careful consideration of all the facts and circumstances discussed above I hold that the management has been able to establish the charge brought against the concerned workman. Now the point for consideration is whether there is any scope to modify the order of punishment passed against the concerned workman by the management in view of the provision as laid down under Section 11A of the I.D. Act. It is the specific allegation that this is not only the occasion whether the concerned workman was chargesheeted and dismissed from service. Prior to this order of dismissal the concerned workman dismissed from his service committing serious misconduct with effect from 20-1-86. As the concerned workman approached to various Union leaders for his re-employment the management re-considered his case and he was re-employed with effect from 10-3-89 with the expectation that he will mend his character in future. That is not last occasion but previous to that the management issued chargesheet on four occasions for his misconduct.

On all occasions he was punished. The concerned workman got his appointment as Belt Cleaning Mazdoor on 24-6-74 and he was dismissed from his service on 27-5-93. During this period it transpires that on several occasions the concerned workman for committing misconduct was punished. But he did not mend his character. In two occasions his misconduct was very serious. It is expected that in the industry every workman should perform his duty maintaining some norms of the management. It is also expected that the workman should be disciplined so that the work of the industry can be carried on smoothly. Here in the instant case the concerned workman was asked by the Asstt. Divisional Manager not to go down the mine as he was in intoxicating stage but in reply he not only caught hold the hand of the said officer but also abused him in filthy language. It is seen that he took liquor in the midst of his duty hours without attending his place of duty. Such conduct of the concerned workman should be dealt with seriously. As this is not the solitary incident where the concerned workman committed misconduct I do not find any sufficient ground to hold lenient view for modifying the order of dismissal as per the provision laid down under Section-11A of the I.D. Act. Such punishment I consider should be taken as an example so that other workmen should not dare to commit any such serious misconduct in course of duty hours. In view of the facts and circumstances discussed above I hold that the concerned workman is not entitled to get any relief as prayed for. In the result, the following Award is rendered :—

"The action of the management of M/s. Tisco. in dismissing the services of Sri Kailash Mondal, Belt Cleaning Mazdoor is justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 408.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 8/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-1-2003 को प्राप्त हुआ था।

[सं. एल-20012/487/96-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 408.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/97) of the Central Government Industrial Tribunall-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 3-1-2003.

[No. L-20012/487/96-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present :

SHRI B. BISWAS, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act. 1947.

REFERENCE NO. 8 OF 1997

Parties :

Employers in relation to the management of Phularitend Colliery of M/s. BCCL and their workman.

Appearances :

On behalf of the workman	:	Shri K. Chakravorty, Advocate
On behalf of the	:	Shri B. M. Prasad, Advocate employers
State : Jharkhand	:	Industry : Coal

Dhanbad, dated the 16th December, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/487/96-IR(C-I), dated, the 10th January, 1996.

SCHEDULE

"Whether the demand of the union for the reinstatement of Smt. Mukhulwa Kamin as casual workman with full back wages is legal and justified ? If not so, to what relief is Smt. Mukhulwa Kamin entitled ?"

2. It has been submitted by the sponsoring Union that the concerned workman Smt. Mukhulwa Kamin though since 17-10-71 was working at Phularitand colliery as a permanent workman the management with some ulterior motive designated her as casual worker and accordingly issued I.D. card to her.

They submitted that due to serious illness the concerned workman started himself absenting from her duty and remained under treatment not only at colliery hospital but also at Dhanbad Central Hospital. They disclosed that after recovery from the ailment when the concerned workman came to her place of duty with fit medical certificate with a view to resume her duties she was not allowed by the management to resume her duty without assigning any

reason. In this regard inspite of submitting representation the management did not do anything. They alleged that as the decision of the management was illegal, arbitrary and against the principle of natural justice an industrial dispute accordingly was raised before the ALC(C), Dhanbad for conciliation which ultimately resulted reference to this tribunal.

The sponsoring Union accordingly on behalf of the concerned workman have prayed for passing an award directing the management to reinstate the concerned workman to her service with full back wages and other consequential relief.

4. The management of contrary after filing WS-cum-rejoinder have denied all the claims and allegations which the sponsoring Union asserted in their W.S. on behalf of the concerned workman. They submitted that they got surprised on receipt of a notice from the ALC(C) Dhanbad over this industrial dispute raised by the sponsoring union in the matter of reinstatement of the concerned workman in service with back wages. As the case was very old one on their request the sponsoring Union produced one document purported to be an I.D. Card issued in favour of the concerned workman. From that purported paper it exposed that the concerned workman was a casual wagons loaders employed on 17-10-71 and her date of birth was 11-4-40. They submitted that during the period from 1971 to 1975 they found difficulties in loading wagon as on some days no wagon used to be placed. On certain occasions average number of wagon used to be supplied and the permanent wagon loaders were capable of loading those wagons. They disclosed, in some occasions in order to cope with loading of extra wagons casual wagon loader used to be deployed. Thus there was no guarantee for providing work to casual wagon loaders on all working days of the month. The supply of wagons were eratic that the casual wagon loaders could hardly get jobs for 5 or 6 days in a month. Accordingly in order to solve such problems mechanical loading was introduced in almost all the collieries by deploying pay loaders and administrative action was taken to ensure regular supply of wagons. In view of change of situation in the matter of loading of wagons with the help of pay loader the need of casual wagon loaders was eliminated and for which many casual wagon loaders left their job. However, in some collieries where casual wagon loaders were deployed for loading coals in the wagon and who worked for more than 240 days in a year their services were regularised as permanent wagon loaders. They submitted that there is no record of employment of the concerned lady as it is a pretty old case being more than 20 years old. They further alleged that the identity card which the sponsoring union produced on behalf of the concerned workman was also not a genuine one. Moreover they observed that the concerned workman when placed her claim had already attained her age of 58 years and for which her demand for employment could not be entertained at any circumstances.

5. They submitted that as the concerned workman was not suitable for her employment on medical ground and as she did not report for her duties and did not raise her dispute for more than 20 years the claim of the union for her reinstatement at this old age could not be entertained. They alleged that the sole motive of the sponsoring union is to help the concerned workman to earn wages without doing any work. Accordingly they submitted their prayer to pass award rejecting the claim of the concerned workman through sponsoring union.

6. The points to be decided in this reference are :—

"'Whether the demand of the union for the reinstatement of Smt. Mukhulwa Kamin as casual workman with full back wages is legal and justified ? If so, to what relief is Smt. Mukhulwa Kamin entitled ?"

7. Decision with reasons.

It transpires from the record that inspite of getting ample opportunities the sponsoring union did not consider necessary to adduce any evidence on the part of the concerned workman to substantiate the claim in question. Obviously the management did not adduce any evidence. Under the circumstances, relying on the facts disclosed in the pleadings of both sides let me consider if the concerned workman is entitled to get any relief according to her prayer.

It is the contention of the sponsoring Union that the concerned workman was a permanent wagon loader at Phularitand Colliery since 17-10-71. It has been alleged by the sponsoring union that inspite of the fact that the concerned workman was a permanent workman the management with ill motive issued identity card showing his status as casual wagon loader. The sponsoring union further submitted that in course of discharging her duties the concerned workman fell ill and remained under the treatment of the doctor of the colliery and then she remained under treatment at Central Hospital, Dhanbad. They disclosed that after recovery from ailment when the concerned workman came to the place of work with a view to resume her duties with fitness certificate issued by the doctor, she was not allowed by the management to resume her duties. It is the claim of the sponsoring union that the concerned workman performed her duties for more than 240 days in each year. They alleged that the decision of the management not to allow the concerned workman to resume her duties was not only illegal, arbitrary but also against the principle of natural justice.

8. On the contrary from the submission of the management I find a different picture. They not only challenged the genuinity of the identity card issued by the management but also submitted that they have failed to trace out the name of the concerned workman in the register of casual workers, during the period when it has been claimed by the sponsoring union that the concerned workman started discharging her duties as wagon loader.

9. They disclosed that during the period of 1971—75 due to heavy placement of wagon on some dates for loading coal that they had to deploy the services of some casual workers to meet the problem of wagon loading as it was not possible to meet such problem with permanent wagon

loaders. Subsequently by introduction of pay loaders when that problem of loading coal in the wagons was overcome the need of engagement of casual workers became eliminated to a great extent and for which many casual wagon loaders left their job. However, in some collieries where services of casual wagon loaders were deployed and where it was found that the wagon loaders had performed duties for more than 240 days in a year they were regularised as permanent wagon loaders. They alleged that neither the concerned workman had been able to produce a single scrap of paper to show that she performed the duties as casual wagon loader nor she could be able to substantiate her claim that she became permanent wagon loader. The management further disclosed that after lapse of 20 years : the concerned workman came forward to place her claim when she was 58 years old. Under the circumstances her claim could not be considered at all considering its legal aspect.

10. Considering all the facts disclosed in the pleadings the concerned workman cannot avoid her responsibility to show that she was a permanent wagon loader under the management. She also cannot avoid her responsibility to show that even she performed her duties as casual wagon loader. The sponsoring union has got ample scope to produce relevant papers in support of the claim in question but they did not consider necessary to do so.

11. It is curious to note that the sponsoring union in their W.S. did not disclose for which date, month and year the concerned workman fell ill and how long she remained absent on that ground. They disclosed that the concerned workman not only remained under treatment of the doctor of the colliery but also she remained under treatment at Central Hospital, Dhanbad and after recovery from the treatment when she came to her place of duty with fit certificate issued by the doctor she was refused to join her duty by the management. The allegation appears to be very serious in nature and accordingly the sponsoring union cannot avoid their responsibility to substantiate the claim in question. It is seen that the sponsoring union neither has been able to show from which date, month and year the concerned workman started herself remaining absent from duty nor they could be able to produce a single scrap of medical paper to show that she remained under treatment of the doctor of the colliery or at Central Hospital, Dhanbad. No satisfactory explanation is forthecoming before this Tribunal on the part of the sponsoring union about the reason for non-production of any such document, which could easily be taken into consideration in support of her claim. Accordingly there is ample reason to disbelieve the claim of the concerned workman that she for her ailment had to remain herself absent from duty for a considerable period.

12. It is the claim of the sponsoring union that as casual worker the concerned workman performed her duties for more than 240 days in each calendar year. Before taking into consideration of this aspect on us on the sponsoring union to show that she was a casual wagon loader of the management and as casual wagon loader she performed her duties for more than 240 days in a year. I find no hesitation to say that the sponsoring union has failed to produce any cogent paper in support of their claim. Even they did not consider necessary to produce that identity card which alleged to have been issued by the management.

13. No satisfactory explanation is forthcoming on the part of the sponsoring union why they took 20 years to raise the industrial dispute. In this regard also the sponsoring union has failed to give any satisfactory answer.

14. It should be borne into mind that facts disclosed in the pleadings cannot be considered as substantive peace of evidence until and unless it is substantiated by cogent evidence. The sponsoring union inspite of getting ample opportunities did not consider necessary to come forward to substantiate the claim in question. Accordingly, relying on the facts disclosed in the W.S. I find no scope to give relief to the concerned workman upholding its contention.

In the result, the following award is rendered :—

"The demand of the Union for the re-instatement of Smt. Mukhulwa Kamin as casual workman with full back wages is not legal and justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 409.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 4/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/01/2003 को प्राप्त हुआ था।

[सं. एल-20012/505/94-आई. आर. (सी.-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 409.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 4/96) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 03/01/2003.

[No. L-20012/505/94-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present :

SHRI B. BISWAS, Presiding Officer

In the matter of an Industrial Dispute under section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 4 OF 1996

Parties : Employers in relation to the management of Shaft Mine of M/s. BCCL's Sudamdih Colliery and their workman.

Appearances :

On behalf of the workman : Shri K. Chakravorty, Advocate

On behalf of the employers : Shri S. N. Sinha, Advocate

State : Jharkhand : Industry : Coal

Dhanbad, the 12th December, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/505/94-IR(Coal-I), dated, the 4/5-12-95.

SCHEDULE

"Whether the action of the management of Sudamdih Shaft Mine of M/s. BCCL in dismissing Shri Dhiren Mahato, P.R.W. is justified? If not, to what relief the concerned workman is entitled ?"

2. The case of the concerned workman according to the W.S submitted by the sponsoring Union on his behalf in brief is as follows :—

The sponsoring union in their W. S. submitted that the concerned workman was a permanent piece rated worker at Sudamdih Shaft Mine since long with unblemished record of service. Unfortunately the concerned workman started absenting from duty on the ground of his illness and he informed the same to the management. They submitted that after recovery from ailment when the concerned workman came to his place of work to resume his duty he was not allowed to do so. They alleged that the management knowing fully well about absence of the concerned workman issued a chargesheet to him dt. 2-12-92 for alleged absence from duty with effect from 19-9-92 to 28-11-92. However, on receipt of the said chargesheet the concerned workman submitted his reply denying the charges brought against him but the management without accepting his reply started a domestic enquiry against the concerned workman through an Enquiry Officer and the said enquiry officer without affording him full opportunity completed his enquiry and submitted a perverse report violating the principle of natural justice. They alleged that on the basis of that perverse report disciplinary authority dismissed him from service with effect from 7/8-1-93

3. They submitted that the concerned workman submitted representation before the management several times against his illegal, and arbitrary dismissal of his service but did not yield any result. As a result, they on behalf of the concerned workman raised an industrial dispute which ultimately resulted reference to this Tribunal for Award.

4. The sponsoring Union accordingly on behalf of the concerned workman submitted prayer to pass an Award directing the management to reinstate the concerned workman in service with full back wages.

5. The management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegations which the sponsering Union asserted in their W.S.

6. They submitted that while the concerned workman was in service as piece rated worker he developed the habit of absenting himself from duty without their permission and also without showing any satisfactory cause as per his sweetwill. They submitted that during the years 1989, 1990, 1991 the concerned workman attended 86 days, 83 days and 94 days respectively for his duty. Again in the year 1992 he did not perform his duty for a single day. He put 22 days attendance in July and 21 days attendance in August, 1992. In the month of September he put only 13 days attendance and thereafter he started absenting from his duty with effect from 19-9-92 continuously till 18-11-92.

7. As the concerned workman committed misconduct for his habitual absence from his duty without sanctioned leave or without sufficient cause and as he absented continuously for more than 10 days from 19-9-92 to 28-11-92 he was served with a chargesheet dt. 2-12-92 under clause 26-1-1 of the Certified Standing Order applicable to their establishment. In response to the said chargesheet the concerned workman submitted his reply on 3-12-92. But as his reply was far from satisfactory reason the Disciplinary authority appointed an Enquiry Officer to conduct Enquiry against him.

8. They disclosed that Shri Suresh Sharma, Personnel Manager conducted the enquiry proceedings being on E.O. in presence of the concerned workman. During enquiry proceeding he gave full opportunity to the concerned workman to cross-examine the witness and also to defend his case. After completing enquiry the E.O. submitted his report holding the concerned workman guilty to the charges. Management submitted that the E.O. held the enquiry fairly and properly without violating the principle of natural justice. Accordingly after considering report submitted by the E.O. the Disciplinary Authority accepted the same and dismissed him from service vide letter dt. 7-1-93. They submitted that the action taken by them in dismissing the concerned workman from his service was legal, bonafide and justified and for which they submitted their prayer to pass award rejecting the claim of the concerned workman.

9. The points to be decided in this reference are :—

"Whether the action of the management of Sudamidh Shaft Mine of M/s BCCL in dismissing Dhri Dhiren Mahato, P.R.W. is justified? If not, to what relief the concerned workman is entitled?"

DECISION WITH REASONS

10. In view of the facts disclosed in the pleadings of both sides I find no dispute to hold that the concerned workman was a piece rated worker at Sudamdih Shaft Mine. It is admitted fact that the management has dismissed him from service on the basis of enquiry report submitted by the Enquiry Officer. The allegation of the management is that the concerned workman developed the habit of absenting himself from duty without leave and also without assigning any cogent ground since 1989. They submitted that in the year 1989, 1990, 1991 the concerned workman put his attendance for 86 days, 83 days and 94 days respectively. During the month of January, February, March and April, 1992 he put his attendance for 12 days, 19 days, 15 days and 8 days respectively. He did not put his attendance in the month of May and June, 1992 while he gave his attendance for 22 days in the month of July and 21 days in the month of August. Thereafter from 19-9-92 to 18-11-92 he remained himself absent from duty continuously. As per clause 26.1.1 of the Certified Standing Order as absence for more than 10 days without leave or assigning satisfactory reason is considered as a serious misconduct they issued a chargesheet to the concerned workman dt. 2-12-92. The concerned workman submitted his reply but as his reply was not satisfactory they appointed an Enquiry Officer to conduct enquiry proceeding against the concerned workman. Mr. Suresh Sharma Personnel Manager, Sudamdih Shaft Mine conducted the Enquiry proceedings. They submitted that the concerned workman fully participated in the enquiry proceeding and the E.O. gave him full opportunity to cross-examine the management witnesses and also to defend his own case. Management submitted that in course of enquiry proceeding he did not raise any sort of objection against the Enquiry Officer who held the enquiry. Accordingly after completion of enquiry the Enquiry Officer submitted his report holding the concerned workman guilty to the charges brought against him. The Disciplinary authority after consulting the report accepted the same and issued the order of dismissal against him.

11. The sponsoring union in their W.S. admitted the fact about absence of the concerned workman from duty for the period in question. They disclosed that owing to illness of the concerned workman he was compelled to remain himself absent and the matter was duly informed to the management but the management ignoring the fact of his ailment issued chargesheet to him to which he gave reply but they without accepting the same started perverse enquiry against him through Enquiry Officer, appointed to that effect. The E.O. ignoring all fairness and propriety and violating the principle of natural justice submitted his report holding him guilty to the charges and the management relying on the report illegally and arbitrarily dismissed him from service.

12. It is seen from the record that the management in order to substantiate their claim have submitted all papers relating to enquiry proceeding conducted by the E.O. Considering the papers it transpires that the concerned workman on 3-12-92 intimated the management about his reasons for remaining himself absent from duty from 18-9-92 to 28-11-92. This petition shows clearly that after enjoying his unauthorised leave he submitted such petition. Therefore, it is not the fact that during the period of his absence he did not intimated the management about the reason of his absence. It is seen that the concerned workman relied on a Medical Certificate in support of his claim issued by an unregistered Homoeopath Doctor. Accordingly such certificate bears no legal value for its acceptance. Pain in abdomen as per the said certificate is not a disease. Accordingly on the basis of fishy findings there is no scope to say that the concerned workman was suffering from any disease. Therefore, there is no scope to say that the management issued any illegal chargesheet to the concerned workman for committing misconduct on the ground of absentism under clause 26.1.1 of the Certified Standing Order.

13. Onus rests on the concerned workman to show that the Enquiry Officer made a perverse enquiry violating all fairness and propriety and also violating the principle of natural justice. It is seen from the record that the concerned workman did not adduce any evidence in order to substantiate his claim. On the contrary in course of hearing the representative of the concerned workman submitted categorically that the concerned workman is not interested to proceed with the hearing of this case. Obviously the management declined to adduce any evidence. Therefore, at this stage there is no scope to say in absence of cogent evidence that the Enquiry Officer conducted the enquiry and submitted his report ignoring all fairness and propriety and also violating the principles of natural justice. I have considered the report submitted by the Enquiry Officer and also findings of the Disciplinary authority and failed to find out any serious discrepancy relating to the findings. Accordingly, there is no scope to say that the enquiry done by the E.O. was illegal, perverse and it violated the principle of natural justice. Accordingly I hold that the charge which was brought against the concerned workman under clause 26.1.1 of the Certified Standing Order has well been established.

14. It is seen that the concerned workman created habit to remain himself absent from duty. Apart from the specific period of absence mentioned in the chargesheet the concerned workman remained himself absent during the major period of 1989, 1990 and 1991 and upto the middle part of 1992. This attitude of the concerned workman shows clearly how sincere he was in performing his duties. In view of the facts and circumstances there is reason to believe that such an indisciplined worker was a burden to the management as his acts affected the production. As such after careful consideration of all the facts and circumstances, I find no scope to alter the punishment imposed on him as per Sec. 11A of the I.D. Act, 1947.

In the result, the following Award is rendered :—

"The action of the management of Sudamdih Shaft Mine of M/s. BCCL in dismissing Shri Dhiren Mahato P.R.W . is justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 410.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I, धनबाद के पंचाट (संदर्भ संख्या 77/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2003 को प्राप्त हुआ था।

[सं. एल-20012/523/98-आई.आर. (सी.1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 410.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 77/99) of the Central Government Industrial Tribunal I, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 03-01-2003.

[No. L-20012/523/98-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD.

In the matter of a reference under Sec. 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 77 of 1999.

PARTIES:

Employers in relation to the management of Bastacola Colliery of M/s. B.C.C. Ltd.

AND

Their Workman.

PRESENT:

Shri. S.H. Kazmi, Presiding Officer.

APPEARANCES:

For the Employers : Shri S.N. Sinha, Advocate.

For the Workman : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

State : Jharkhand Industry : Coal.

Dated, the 10th December, 2002.

AWARD

By Order No. L-20012/523/98-IR(C-I) dated 17-5-1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-sec. (1) and sub-sec. (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to this Tribunal.

"Whether the demand of the union for regularisation of Sri Arbinda Ghosh, Deputy Surveyor to the post of Technical & Supervisory Gr. A is justified? If so, what relief the concerned workman entitled to and from which date?"

2. Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union, appearing on behalf of the workman submits that the sponsoring union and the concerned workman are no more interested in pursuing this case any further and necessary order as regards final disposal of this case be passed. Shri S.N. Sinha for the management has no objecton to that effect.

As it is evident from the above, no dispute remains in existence for being adjudicated, this reference is finally disposed of.

Let a copy of this award be sent to the Ministry.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 411.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 14/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2003 को प्राप्त हुआ था।

[सं. एल-20012/451/95-आई.आर. (सी.1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 411.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/97) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 03-01-2003.

[No. L-20012/451/95-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, AT DHANBAD.

PRESENT:

SHRI B. BISWAS, Presiding Officer.

In the matter of Industrial dispute under Sec. 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 14 of 1997

PARTIES:

Employers in relation to the management of Sudamdih Colliery of M/s. B.C.C.L. and their workman.

APPEARANCES:

On behalf of the Workman : None.

On behalf of the employers : Shri R. N. Ganguly, Advocate.

State : Jharkhand Industry : Coal.

Dated, Dhanbad the 10th December, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/451/95-IR(Coal-I), dated, the 14th January, 1997.

SCHEDULE

"Whether the demand of the union for revision of the date of birth of Sri Utabali Mian by the management of Patherdih Colliery of M/s. BCCL, is legal and justified ? If so, to what relief is the said workman entitled?"

2. The case of the concerned workman according to the W.S. submitted by the sponsoring Union on his behalf in brief is as follows :—

They submitted that the concerned workman was a Timber Mistry under the management having his I.D. Card No. 11027[illegible]. His P.F. No. was C-366505. They submitted that in the capacity of Timber Mistry the concerned workman started working under the management with effect from 2-1-67. At the time of the joining in the service his age was recorded in the Form B Register. They submitted that Patherdih Colliery was a non-coking coal mines and it was taken by the Central Govt. in the month of November, 1971 and now it is controlled by the BCCL. After taking over of the said mine the management prepared new Form B Register is respect of the workmen of the said colliery. After taking over of the said colliery the management issued service excerpt to all the wokman calling for objection with a view to rectification of the service records if any. According to the service excerpt issued to the concerned workman vide No. 226 dt. 18-6-87 it transpired that the date of birth of the concerned workman was recorded as 16-7-38 in place of 16-7-46. Accordingly the concerned workman submitted a petition on 18-6-87 before the management with a request to correct his date of birth but the management did not take any step in view of his prayer. Thereafter the matter was taken up by the sponsoring union and several representations were given to the management for rectification of the date of birth of the concerned workman but the management did not pay any heed to those representations. They disclosed that actually the age which was recorded in the year 1967 in the Form B Register in respect of the concerned workman was not considered by the management and the management never produced the same for verification nor did they take any step as per the existing norms of the industry. Accordingly they raised an industrial dispute before the ALC(C) for conciliation which ultimately resulted reference to this Tribunal for Award.

3. The management on the contrary after filing W.S-cum-rejoinder have denied all the claims and allegations which the concerned workman/union asserted in their W.S. The manangement submitted that the concerned workman was appointed on 2-1-67 at Patherdih colliery as permanent workman. They disclosed that the date of birth of the concerned workman in the Form B Register was recorded as 16-7-38 and his date of birth was duly authenticated by the concerned workman himself which clearly signifies that he being satisfied with the date of birth recorded in the Form B Register accepted the same. They disclosed further that apart from the date of birth recorded in the Form B Register the date of birth of the concerned workman was also recorded in the service file as 16-7-38 maimained at the colliery office. In the year 1987 copies of the service excerpt was supplied to all the workmen including the concerned workman wherein the date of birth was also recorded as 16-7-38. All the workmen including the concerned workman was given adequate opportunity to raise objection in the prescribed manner if any but the concerned workman did not file any objection against entries made in the service excerpt which also indicated that he accepted the entry made in his date of birth col. as 16-7-1938. In the I.D. Card register the date of birth of the concerned workman was recorded as 16-7-1938. Inspite of his claiming wrong recording of his date of birth the concerned workman has failed to produce any valid proof to that effect. Accordingly the management submitted that there was no discrepancy in recorded the date of birth of the concerned workman in the official registers including the Form B Register and for which there was no scope to entertain the claim of the concerned workman in terms of Implementation Instruction no. 76 of JBCCI. Accordingly the management submitted their prayer to pass an Award rejecting the claim of the concerned workman.

4. The points to be decided in this reference are :—

"Whether the demand of the Union for the revision of the date of birth of Sri Utabali Mian by the management of Patherdih colliery of M/s. BCCL is legal and justified ? If so, to what relief is the said workman entitled?"

DECISION WITH REASONS

5. Considering the records it transpires that the concerned workman was examined as WW-1 in part in course of hearing of this case and thereafter the concerned workman did not appear and for which neither his further examination-in-chief could be completed nor the management got the scope to cross-examine him. In view of the circumstances the management also did not adduce any evidence. As the management did not got any scope to cross examine WW-1 the facts disclosed by him has no evidenciary value as the same is liable to be expunged. In the circumstances let us consider how far the claim of the concerned workman stands on cogent footing or not. It is admitted fact that the concerned workman was engaged as Timber Mazdoor at Patherdih Colliery on 2-1-67. It is the contention of the concerned workman that the management instead of recording his date of birth as 16-7-46 recorded his date of birth as 16-7-38 the moment he came to know this irregularities on receipt of the service excerpt he submitted a representation to the management for its rectification. But the management did not give any importance to the same. Accordingly the concerned workman raised an industrial dispute through the sponsoring union. On the contrary from the submission of the management it transpires that not only the date of birth of the concerned workman was recorded in the Form B register which is the statutory register under the Mines Act as 16-7-38 but the same date of birth was also recorded in the service except maintained by the colliery. The same date of birth was also recorded in the I.D. card register. Apart from recording date of birth in those registers the management further submitted that in the year 1987 service excerpt was handed over to the concerned workman along with other workman for filing any objection if any in the matter of recording any particulars including the date of birth but inspite of receiving the service excerpt the concerned workman did not consider necessary to raise any dispute. The management further submitted that in support of this claim the concerned workman also did not consider necessary for submitting any valid proof and accordingly there was no scope to rectify his date of birth relying on the JBCCI Circular No. 76. The JBCCI Circular No. 76 has clearly pointed out under which circumstances the date of birth of the concerned workman could be re-altered. Accordingly onus absolutely was on the concerned workman to establish that his date of birth was not 16-7-38 on 16-7-46. In course of hearing the concerned workman had got ample scope to produce valid document to justify his claim but the concerned workman did not consider necessary to produce any such valid proof. On the contrary it transpires that in the midst of his recording evidence he left and never turned up to adduce further evidence and as a result the management also did not get any scope to cross-examine. Mere claim for rectification of date of birth cannot be considered as cogent proof until and unless the same is supported by cogent document. The concerned workman inspite of getting ample scope has failed to substantiate his claim. Accordingly I hold that the concerned workman is not entitled to get any relief in view of his prayer. In the result the following Award is rendered :—

"The demand of the Union for the revision of the date of birth of Sri Utabali Mian by the management of Patherdih colliery of M/s. BCCL is not legal and justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 412.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I, धनबाद के पंचाट (संदर्भ संख्या 177/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2003 को प्राप्त हुआ था।

[सं. एल-20012/388/96-आई.आर (सी.1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 412.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 177/97) of the Central Government Industrial Tribunal-I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 03-01-2003.

[No. L-20012/388/96-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD.

In the matter of a reference under Sec. 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 177 of 1997

PARTIES :

Employers in relation to the management of Bastacolla Area of M/s. B.C.C.L.

AND

Their Workmen.

PRESENT :

Shri. S.H. Kazmi, Presiding Officer.

APPEARANCES:

For the Employers : Shri. R. N. Ganguly, Advocate.

For the Workmen : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

State : Jharkhand Industry : Coal.

Dated, the 9th December, 2002

AWARD

By Order No. L-20012/388/96-IR(C-I) dated the 24th October, 1997 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-sec. (1) and Sub-sec. (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to this Tribunal:

> "Whether the action of the management of Bastacolla Area of M/s. BCCL in denying the alteration of age or referring the case to Apex Medical Board for re-assessment of age of Sri Subhas Baral is unjustified? If yes, to what relief is the workman entitled?"

2. Briefly stated, the case of the concerned workman is that he had been working as Electrical Helper at GOCP of Bastacolla Area of M/s. BCCL since long with unblemished record of service. It has been said that the service excerpt was issued to him wherein and whereby the age of the concerned workman was recorded as 1-7-1936. The concerned workman thereafter put an objection to the illegal and arbitrary recording of his age in the service excerpt and he stated in the service excerpt that his actual date of birth is 1941. Further it has been said that as per the policy decision and circular it was mandatory upon the management to accept the date of birth as stated by the concerned workman in his service excerpt and in the event of any objection, to refer him to Medical Board but neither the management accepted his age as stated by the concerned workman in his service excerpt nor referred him to Medical Board for determination of his age. It is said that the concerned workman had submitted a representation also before the management in that regard and in that it was also disclosed that the age of his elder brother, Sushanta Baral, an Executive working in M/s. BCCL was recorded in the statutory record of M/s. BCCL as 52 years as on 16-8-90 which was indicative of the fact that the age of the younger brother i.e the concerned workman was wrongly recorded in the statutory register of the management. No any action was taken by the management and ultimately an industrial dispute was raised before the A.L.C.(C). Dhanbad but the same ended in failure due to adamant attitude of the management and consequently the dispute was referred by the Central Government to this Tribunal for adjudication. It has been said that the action of the management is not justified and it may be directed either to accept the age as stated by the concerned workman in his service excerpt or to refer him to Medical Board for assessment of his actual age and further direction be made for arrear wages and consequential benefits.

3. The management, on the other hand, has come out with the case as disclosed in its written statement, that at the time of his appointment the workman concerned declared his date of birth as 1-7-1936 in Form 'B' Register which is a statutory register and he had put down his signature on that register in token of his acceptance of the entries made therein. It has also been said that the date of birth of the concerned workman was recorded as 1-7-1936 in the Identity Card Register as well as in the CMPF record. It has also been said that the concerned workman did not raise any objection or protest regarding his date of birth for a considerable long time and it is only at the fag end of his service he started raising dispute with some ulterior motive to continue in employment for sometime more. Further, it has been said that as per Implementation Instruction No. 76 of JBCCI an employee's age can be re-assessed through Apex Medical Board only when there is variation in official record of the company but in the instant case there is no variation about the date of birth of the workman in any of the records of the company as mentioned above and hence he was not entitled to be referred to Apex Medical Board for re-assessment of his age. Lastly, it has been said that the concerned workman is not entitled to any relief whatsoever.

4. In view of the stands taken by the respective sides as noticed above quite apparently the moot question appears to be involved is as to how far the management was correct in not accepting the age of the concerned workman as disclosed by him or not referring him to Apex Medical Board for actual assessment of his age in order to make necessary correction, if required.

5. In support of their respective stands both sides have led their oral as well as documentary evidence which would be taken note of and considered in course of discussions made hereinafter.

6. As it is apparent, in all the relevant records of the company, such as, Form 'B', Identity Card and CMPF register the date of birth of the concerned workman has been consistently shown as 1-7-1936. Further it is evident that Form 'B' Register or Identity Card Register does not contain either his signature or thumb impression. It is also apparent from service excerpt (Ext. W-1) that the concerned workman did not disclose his actual date of birth or his brother's date of birth and simply he mentioned by way of objection that correction be made as his age which is mentioned is more than the age of his elder brother. It is not asserted either in the written statement or in evidence that apart from raising the aforesaid objection, quite obviously in a very vague manner, the concerned workman at that time or at any time before 1996 furnished document before the mangement showing his actual date of birth or other

relevant facts supporting his case. It is evident from his own representation (Ext. W-3/2) that the workman furnished few documents for the first time alongwith said representation dated 17-4-96 that means during the conciliation proceeding. The concerned workman (WW-1) himself has admitted in course of his cross-examination that along with objection petition or service excerpt he had not furnished the document in support of his objection. He has not stated as to when for the first time he furnished those documents before the management.

7. As far as those documents are concerned filed and exhibited on behalf of the workman in the instant case, Ext. W-1/1 is service excerpt containing the aforesaid objection raised. Ext. W-2 is the Identity Card which does not contain the date of birth of the concerned workman, Ext. W-3 series are the letters or representations said to have been submitted before the management from time to time after 1990. Exts. W-4 and W-4/1 are two affidavits filed by the workman in support of the date of birth. Ext. W-5 is the certificate granted by M.L.A. and Mukhiya in support of the workman's stand and Ext. W-6 is matriculation certificate of the workman showing his date of birth as 1-7-1941. One another documents which has been marked 'X' for identification is the matric certificate of Sushanta Baral, who is said to be the elder brother of the concerned workman.

As far as Form 'B' Register (Ext. M-1) is concerned, though no statement has been made in the written statement or the rejoinder challenging the genuineness of the same either on the ground of the same being forged or interpolation being done in any manner therein. But during evidence the concerned workmen disowned his thumb impression upon that and further in course of the cross-examination of MW-1 it was suggested to him that the ink of the date of birth is different to which he answered in affirmative and then in course of argument it was contended that apart from the fact that it is not the Form 'B' register being maintained by erstwhile owner in 1961 when the workmen was appointed, no importance can be attached to its entries in view of the denial of the workman and the aforesaid statement of MW-1. Having examined the said entry in Form 'B' it appears that though ink looks slightly different but there is no difference in writing of the said entry and other relevant entries and further there is no insertion or overwriting or any cutting on the date of birth as mentioned. It appears that in order to make the entries of date of birth more prominent either a different pen was used or the same pen was applied deeply for making the letters bold and prominent, as I find that the date of birth of the other workmen in the said register has been shown in the same manner and those are also made bold and prominent. Therefore, just on account of difference in ink the said entry cannot be taken as not genuine, manipulated or forged one. As far as the thumb impression of the concerned workman is concerned, neither before the A.L.C. (C) nor in the written statement or rejoinder any statemant has been made to the effect that the same was not the thumb impression of the concerned workman. It is only during his evidence the workmen for the first time has come out with the statement that it was not his thumb impression.

8. The assertion of the workman is that when the dispute was raised by him then as per JBCCI policy decision he ought to have been referred to Apex Medical Board for assessment of his age and since it was not done the entire action of the management was bad and illegal.

The management's assertion, on the other hand, is that as per JBCCI a workman can be referred to Apex Medical Board only when there is variation in the service record as far as the date of birth is concerned. But in the instant case as there was no variation as such in any document there was no question of referring the workman to Medical Board. The submission is that the action of the management cannot be challenged on any ground whatsoever and the workman was rightly superannuated in accordance with the entries in statutory records, such as, Form 'B' Register.

9. It is true that as per Implementation Instruction No. 76 a workman can be referred to Medical Board only when there is variation in the records and in the instant case so far the date of birth is concerned there does not appear to be any variation and in all the relevant documents the date of birth is consistently mentioned as 1-7-1936. It is also true that MW-1 has stated clearly that only in appropriate case, the matter is referred to Medical Board and according to him in the instant case there was no variation in the record. Further it is true that in the year 1987 the concerned workman raised the objection for the first time and that too in a very vague manner and did not supply the documents in support of his objection for a long time and raised industrial dispute in 1995 only about the year before his retirement.

But despite all the above, the fact remains that the workman was appointed in 1961 and Form 'B' of the erstwhile owner of the colliery was not referred to and the workman was challenging the entries in those records in some of which his L.T.I. or signature was not there and in support of his objection, of course belatedly he produced few documents also, such as, matric certificate and affidavits and also one certificate to show that his elder brother's date of birth is less than his date of birth as shown in the service record. Therefore, in view of such circumstances even if there was no variation in the service record but taking this case as glaring or exceptional, the management should have made positive consideration and for its own satisfaction should have verified the age of the concerned workman by referring him to Apex Medical Board. There is no mandatory or binding rule as such that in case of variation only and under no any other circumstances even if the same are glaring, a workman can be referred to Apex Medical Board. MW-1 himself has

admitted in his evidence that in an appropriate case a workmen is referred to Medical Board. In one of the clauses of Annexure-I of 1-1-76 it finds clearly mentioned that wherever there is no variation in record such case will not be re-opened unless there is very glaring and apparent wrong entry brought to the notice of the management. It is also mentioned therein that the management after being satisfied on the merit of the case will take appropriate action for correction through Age Determination Committee/ Medical Board. In my view, certainly it was a fit and appropriate case taking into account the materials and circumstances involved so it would have been in the fitness of thing if the concerned workman would have been referred to Apex Medical Board for assessment of his actual age.

Therefore, in my considered view the action of the management cannot be held to be justified and the workman deserves to be referred to the Medical Board for assessment of his age and for the relief, if found to have been born after 1936.

10. The award is, thus, made as hereunder :

The action of the management of Bastacolla Area of M/s. BCCL in denying the alteration of age or referring the case to Apex Medical Board for re-assessment of age of the concerned workman is not justified and the workman concerned deserves to be referred to the Apex Medical Board for re-assessment of his age and consequently the workman who has now been retired would be required to appear before the management within 60 days from the date of publication of the award and thereafter the management would fix a date in his presence for his appearance before the Apex Medical Board. On the date fixed the concerned workman would be examined by the Board and the Board would assess his age and would submit its report immediately before the management. In case if it would be found as per the report that date of birth as disclosed by the concerned workman is correct then the management would be required to pay the wages to the workman for the period between the date on which he superannuated and the date upto which he would have remained in the service of the management. Even if it would be found that the year of birth cannot be taken as 1941 but of course beyond 1936 then in that event also the management would be required to pay the wages of that period i.e. between the date of superannuation and the date upto which he would have been in the service of the management. They payment would be required to be made within 30 days from the date of examination of the concerned workman or the assessment of the age by the Apex Medical Board.

The management as such is directed to act accordingly.

However, there would no order as to cost.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 413.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-1 धनबाद के पंचाट (संदर्भ संख्या 261/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2003 को प्राप्त हुआ था।

[सं. एल-20012/379/93-आई. आर. (सी.1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 413.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 261/94) of the Central Government Industrial Tribunal-I Dhanbad now as shown in the Annexure in the Industrial Disputes between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 03-01-2003.

[No. L-20012/379/93-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD.

In the matter of a reference under Sec. 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 261 of 1994.

PARTIES:

Employers in relation to the Management of Katras Project of M/s. B.C.C.L.

AND

Their Workmen.

PRESENT:

Shri. S.H. Kazmi, Presiding Officer.

APPEARANCES:

For the Employers : None

For the Workmen : Shri B. N. Singh, Authorised Representative.

State : Jharkhand Industry : Coal.

Dated, the 12th December, 2002.

AWARD

By Order No. L-20012/379/93-I.R. (Coal-I) dated 10-11-1994 the Central Government in the Ministry of

Labour has, in exercise of the powers conferred by clause (d) of sub-sec. (1) and sub-sec. (2A) of Sec. 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of management of Katras Project Area of M/s. BCCL in not providing employment to Sri Mjnilal Shaw, dependent son of Jagdish Kandu, Ex-Miner/Loader of Katras Chetudih Colliery is justified? If not what relief the workmen concerned entitled to?"

2. Shri B. M. Singh appearing on behalf of the workman submits that the conerned workman of this case is dead and his legal heirs and representatives are no more interested in pursuing the present reference and so appropriate order be passed as regards final disposal of this reference. In view of submission made on his behalf it is needless to keep this case pending any further and as such it is disposed of finally as the parties are not interested in purusing the present matter and there is nothing left to be adjudicated.

Accordingly, an award is passed in this reference case.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 414.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II धनबाद के पंचाट (संदर्भ संख्या 131/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-01-2003 को प्राप्त हुआ था।

[सं. एल-20012/368/96-आई.आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 414.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 131/97) of the Central Government Industrial Tribunal II Dhanbad now as shown in the Annexure on the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 3-01-2003.

[No. L-20012/368/96-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

Present :

Shri. B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d)(2A) of the I. D. Act., 1947.

Reference No. 131 of 1997

PARTIES : Employers in relation to the management of Mohuda Area of M/s. B.C.C.L. and their workman.

APPEARANCES :

On behalf of the Workman : Shri S. Bose, Secretary, R. C. M.S. Union.

On behalf of the employers : None

Satate : Jharkhand Industry : Coal.

Dated, Dhanbad, the 18th December, 2002.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/368/96-IR(Coal-I), dated, the 20th November, 1997.

SCHEDULE

"Whether the demand of the Union for the departmentalisation of the services of S/Shri Ramdahin Singh, Mohan Pandit, Gangadhar Napit and Bhikhu Mahato, Clay Cartridge Makers within the management of M/s. BCCL is justified? If so, to what relief are the concerned workmen entitled?"

2. The case of the concerned workmen according to the W.S. submitted by the sponsoring Union on their behalf in brief is as follows :—

The sponsoring Union submitted that the concerned workmen had been engaged by the management to prepare clay cartridges since the early period of 1974 at Lohapatty Colliery. They disclosed that clay cartridges are required for production of coal by blasting the coal faces with explosives all throughout the year and for which the requirement of the same is permanent in nature. They further disclosed that workmen concerned are required to prepare clay cartridges at the premises of the mine so that regular supply is made in the working faces and for this purpose management provides all raw materials including tools and implements. They submitted that the management used to pay wages to the workmen who prepare clay cartridges on piece rated basis but subsequently due to general policy decision abolished all such adhoc rolls and regularised the clay cartridges makers as time rated Cat. II workers. Accordingly the concerned workmen submitted representation to the management for their regularisation on similar terms and conditions of clay cartridges makers in other coal mines operated by the management but as the management did not consider their prayer they raised an industrial dispute through the union before the ALC(C) Dhanbad for conciliation which ultimately resulted reference to this Tribunal for Award.

3. Management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegations which the sponsoring Union asserted in their Written Statement They submitted that the concerned workmen approached for purchasing clay cartridges from them at the market rate instead of purchasing the same from outside or through other source so that they could earn some livehood by supplying clay cartridges to them. Being agreed with the request of the concerned workmen during the year 1990-91, 1991-92, and 1992-93 purchased clay cartridges from them which they used to manufacture at their village homes with the help of their own tools and implement. They submitted that they used to pay the price of those articles on the basis of the bills submitted by the workmen and vouchers prepared by them. They disclosed that excepting the relationship of purchaser and supplier of clay cartridges between them and those workmen there was no other relationship. They also categorically denied the fact that neither they recruited those workman nor had any control over them in the matter of manufacturing the cartridges and for which question of creating any relationship of employers and employees in between them did not arise.

4. They alleged that the concerned workmen through the sponsoring union have raised this dispute illegally with a view to get their job under the management. Accordingly they submitted their prayer to pass award rejecting the claim of the concerned workmen.

5. The points to be decided in this reference are :—

"Whether the demand of the Union for the departmentalisation of the services of S/Shri Ramdahin Singh, Mohan Pandit, Gangadhar Napit and Bhiku Mahato, Clay Cartridge Makers within the management of M/s. B. C.C.L is justified? If so, to what relief are the concerned workmen entitled?"

DECISION WITH REASONS

6. Considering the facts disclosed in the pleadings of the respective parties I find no dispute to held that the concerned workmen were engaged in supplying clay cartridges to the management for the interest of their business. It is the claim of the concerned workmen that since 1974 they had been engaged by the management to prepare clay cartridges for production of coal by blasting the coal faces with explosives, continuously. They disclosed that as production of coal in the mines is a continuous process around the clock requirement of clay cartridges is a permanent, perennial and essential item. They disclosed that since the period they were engaged in preparing the said cartridges under active supervision and control of the management with the help of tools and implements provided by them. It has been further submitted by them that due to general policy decision the management abolishing adhoc rate system regularised the clay cartridge makers in time rated Cat. I along with other benefits which are available to similar permanent employees as per N.C.W. A at different collieries controlled by them. Accordingly they approached the management to regularise them in the service as time rated Cat. I but they refused to do so.

7. On the contrary denying all the claims of the concerned workmen management submitted that being approached by the concerned workmen they during the period from 1991 to 1993 purchased clay cartridges from them according to market rate and against that they used to pay prices of the same on the basis of bills submitted by them. They categorically denied the fact that the concerned workmen ever prepared cartridges under their direct supervision and control and also on the basis of tools and implements supplied by them.

8. The concerned workmen in support of their claim relied on certain documents including a letter issued by the management addressed to the General Manager, Headquarters dt. 24/25-10-1989. From the contents of this letter it transpires clearly that the concerned workmen and some other persons were the suppliers of clay cartridges. It is seen that the Union launched agitation for regularisation of their services and in doing so they also created obstacle in supply the said cartridges and for which production of coal was hampered. Enclosed documents filed by the workmen shows clearly that they used to submit bills for payment in view of the clay cartridges supplied by them. It is the claim of the concerned workmen that they were piece rated workers and management used to pay them wages on adhoc basis. They further disclosed that in view of general policy decision management abolishing the adhoc payment system to clay cartridges workers regularised their services in time rated category I at different collieries. Accordingly they submitted their prayer to the management to regularise their services in time rated cat. I

9. In order to substantially the claim of the concerned workmen this aspect as mentioned above should be taken into consideration with prime importance.

10. There is no dispute to hold that the concerned workmen were suppliers of clay cartridges, to the management. Initial onus rests with the concerned workmen to show that they were piece rated workers and the management used to pay wages on adhoc basis. I consider that there was no question of submitting bills if they had been considered as piece rated worker. In course of hearing the sponsoring union has failed to produce a single scrap of paper with a view to substantiate their claim. they also have failed to produce the order in question whereby the management regularised the services of the workmen involved in preparing clay cartridges in time rated Cat. I. Until and unless these two aspects are substantiated by cogent evidence and also until and unless it is established by the sponsoring union that the concerned workmen were involved in manufacturing clay cartridges as piece rated

workers under direct control and supervision of the management with the help of their tools and implements there is no scope to uphold such demand particularly when it has been exposed clearly from their own documents that they used to submit bills for payment against the cartridges supplied by them. The documents shows clearly that they were the suppliers of clay cartridges to the management. A supplier of cartridges cannot be considered as piece rated worker until and unless any contrary is established.

11. From the record it has been exposed clearly that several opportunities were given to the sponsoring union to establish their claim but they have failed to avail the opportunity of the same. On the contrary the representative of the concerned workmen in course of hearing submitted categorically that the workmen are not interested to proceed with the hearing of this case.

12. As such it has been exposed clearly that the sponsoring union have failed to substantiate the claim of the concerned workmen though an industrial dispute was raised.

13. It is the specific claim of the management that the concerned workmen were merely suppliers of clay cartridges and they used to pay prices of the same on the basis of the bills submitted by them. They categorically denied the claim that ever any relationship of employer and employee grew up in between them.

Considering the facts and circumstances disclosed above I find no scope to wipe out the claim of the management. As the sponsoring union have failed to substantiate the claim of the concerned workmen lamentably I find no justification to pass any award in their favour.

In the result, the following Award is rendered :—

"The demand of the Union for the departmentalisation of the services of S/Shri Ramdahin Singh, Mohan Pandit, Gangadhar Napit and Bhikhu Mahato, Clay Cartridge Makers within the management of M/s. BCCL is not justified. Consequently, the concerned workmen are not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 415.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I धनबाद के पंचाट (संदर्भ संख्या 90/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-01-03 को प्राप्त हुआ था।

[सं. एल-20012/327/89-आई.आर. (सी.1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 415.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 90/95) of the Central Government Industrial Tribunal - I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 3-01-03.

[No. L-20012/327/89-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 DHANBAD.

In the matter of a reference under Sec.10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 90 of 1995

PARTIES:

Employers in relation to the management of Ghanoodih Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen

Present :

Shri. S. H. Kazmi, Presiding Officer.

Appearances :

For the Employers — Shri S.N. Sinha, Advocate
For the Workmen — Shri K.L. Ramparia, Advocate

State : Jharkhand — Industry : Coal.

Dated, the 17th December, 2002.

AWARD

By Order No.L-20012/327/89-I.R. (Coal-I) dated the 9th August, 1995 the Central Government in the Ministry of Labour, has in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Ghanoodih colliery under bastacolla area of M/s. BCCL is justified in referring the workman Shri R.S. Mishra to Special Apex Medical Board for assessment of the age and accepting the age assessed by the board as final ? If not, to what relief the workman is entitled ?"

2. Precisely, the case of the sponsoring union is that the concerned workman, R.S. Mishra was a permanent

employee in the capacity of Lamp Cabin Incharge at 1/2 pit of Ghanoodih colliery of M/s BCCL and he had joined the service on 1-8-66 before the nationalisation of coal mining industry and he was a member of CMPF also. It has been said that after nationalisation the management prepared fresh record of employees and in Form 'B' Register the management recorded 20-2-1941 as the date of birth of the concerned workman but the same was neither shown to the workman nor was he consulted at any point of time about the said recording of date of birth. However it has been said that the exact date of birth of the concerned workman is 6-3-1943 as appears in the Admit Card of Bihar School Examination Board for matriculation examination held in the year 1960. Further it has been said that the management had due knowledge about discrepancy of age of the concerned workman and should have corrected the age in their records as per management's declared policy. it is said that for the reason best known to the management the workman was referred to Medical board in December, 1987 which assessed the age of the workman as 52 years as on 14-12-87. It is also said that the workman was neither clinically examined nor any x-ray of bones was conducted and the opinion of the workman's age by the board as such is speculative and cannot be imposed upon the workman. Further it has been said that the date of birth mentioned in the Admit Card issued in 1960 cannot be over-ridden by simple opinion of the management's Medical Board whose actions are not neutral or impartial. The action of the management has been termed as unjustified and the relief has been sought for making necessary correction of date of birth by the management and allow the workmen to continue in employment till the completion of 60 years of age.

3. The management's case, on the other hand, is that the age of the concerned workman as appearing in the Form 'B' Register was 28-2-41 and in the CMPF paper his date of birth was shown as 3-9-44 and so there was inconsistency regarding date of birth of the concerned workman recorded in two statutory documents. It has been said that such discrepancy was detected at the time of issuance of service excerpt in the year 1987 and then it was considered a fit case for determination of age by an Age Determination Committee/Medical board as per JBCCI circular No.37 dated 5-2-81 which was in force at the relevant time. The concerned workman was thereafter advised to appear before the Special Apex Medical board at Tisra Central Hospital on 14-12-87. The concerned workman appeared before the said Board and his age was assessed by the Medical board as 52 years as on that date and the said fact was intimated to the concerned workman as well as to the local management. Accordingly his age was corrected as per the assessed age by the Special Apex Medical Board. Further, it has been said that as per Circular No.37 of 1981, whenever there used to be variation in the age/date of birth recorded in two different registers or records maintained by the management, a workman was required to be sent to Age Determination Committee/ Medical board for assessment of his age and the age determined by the said Committee or Medical Board was to be taken to be final for deciding the time of superannuation and none has got any right to challenge the correctness of decision taken by the Medical Board. It is said that the said circular binds not only the management but also all the workmen employed in the coal industry and once the age dispute of a workmen is finally resolved on the basis of Medical board's is report there is no further scope of review of the same on the basis of mere complaint subsequently made. It has been said that the claim of the concerned workman is illegal and unjustified as because if he had any educational certificate, indicating his study in a school upto matriculation in 1966, he could have produced the certificate in the year 1966, at the time of his initial appointment and his date of birth would have been recorded as 6-3-43, both in the Form 'B' register as well as in the CMPF record. It is also said, that when the Form 'B' Register was prepared the concerned workman had put his signature after going through the particulars recorded in Form 'B' register and he did not raise any objection at the time of making the entry relating to his date of birth as 28-2-1941. However it is said that the workman was fully aware about the entry relating to date of birth in Form 'B' Register but he was actuated by greed to earn some money by working for three years more and got the date of birth entered as 3-9-44 in the CMPF record and this foul game played by the concerned workman was detected at the time of finalisation of the service excerpt in the year 1987.

In the rejoinder to the workman's written statement also several averments and statements made therein were denied or controverted. Likewise in the rejoinder filed from the side of workman also the management's several statements and assertions were challenged and it was reiterated that the workman had a good case for correction of his date of birth and the Medical board's finding which was arrived at in a very casual manner could not have been relied upon and should not have been taken as final as far as the present dispute was concerned.

4. In view of the aforesaid stand taken on behalf of the respective sides and also in view of the terms of reference, consideration is required to be made as to how far the action of the management was justified in referring the concerned workman to Special Apex Medical Board and accepting the age assessed by the said Board as final.

5. Both the sides have led their oral as well as documentary evidence which would be looked into and considered in course of the discussions made hereinafter.

6. It stands undenied that in Form 'B' register the date of birth of the concerned workman is mentioned as 28-2-41 and in the CMPF record it is mentioned as 3-9-1944. Now as per the management, when such variation in two

different records was noticed in the year 1987 at the time of preparing service excerpt, it was considered necessary as per JBCCI policy decision to refer the concerned workman to Special Apex Medical Board for actual assessment of his age. The said Board examined the workman and assessed his age as 52 years as on 14-12-87 and thereafter necessary correction was made in the service record and then in accordance with that the workman was superannuated in the year 1995. Submission is that nothing illegal or wrong was done and so the action of the management in no manner can be challenged.

7. The concerned workman was appointed in the year 1966 before the take over of the concerned colliery by the present management. It is not the case of the workman that in Form 'B' Register of erstwhile colliery the date of birth was mentioned not in the same way as it was mentioned in Form 'B' of the present management. Rather there is no statement as to what was the date mentioned in Form 'B' of erstwhile colliery. The stand taken in the written statement of the workman is that entry in Form 'B' was neither shown to the workman nor was he consulted at any time about the said recording of date of birth. This statement cannot be believed as the relevant entry in Form 'B' contains the signature of the workman also and as regards which in the written statement there is no statement as to how then his signature appears in Form 'B' register if his aforesaid statement is to be believed. During his evidence the concerned workman (WW-1) has accepted the said fact and has not disowned his signature or has made the statement that he was compelled or forced to put his signature therein. Being a literate person it can well be expected that he was knowing about the fact of entries in Form 'B' and had acknowledged the same by putting his signature thereon. In the written statement it has not been stated as to when the workman came to know about the said entry and whether any objection or dispute was raised before the management soon thereafter or not. In the evidence, however, the workman has said that in the Identity Card his date of birth has been mentioned as 28-2-1941 which contains his signature also and has further said that when Identity Card was issued to him then for the first time he came to know about the entry of the aforesaid date of Birth in new Form 'B' Register.

Therefore, in view of all the aforesaid, precisely it can be observed that despite having knowledge about the entry in Form 'B' the workman raised objection in the year 1987 and that too when the Board had already assessed his age and submitted its report.

8. Much reliance has been placed upon the Admit Card (Ext. W-1) wherein the date of birth of the concerned workman is mentioned as 6-9-43. Neither in the written statement nor in the evidence anywhere it has been said whether the said document was produced either at the time of appointment or at the time of raising objection or not and if the same was in the possession of the workman then why he did not consider it necessary to produce the same before the management either for making entry in Form 'B' (Ext. M-1) in accordance with that or for making necessary correction in the date of birth prior to his reference to the Apex Medical Board.

Now at this stage forcefully the contention has been made that the correction in the service record should have been made as per the date mentioned in the Admit Card and the opinion of the Board has no over-riding effect upon such entry of Admit Card. In short, stress is that the Form 'B' entry or the opinion of the Medical Board have no value in the face of the Admit Card containing the date of birth. In my view, such argument is not only fallacious rather most unconvincing and unacceptable.

From 'B' Register is maintained in Coal Mines Industry under Sec. 48 of the Mines Act, 1952 read with Rules 77 of Mines Rules, 1955 and so this register is considered to be a statutory register and the entries made therein are considered to be final, genuine and authentic. It is undenial that during the relevant period JBCCI Circular No.37 dated 5-2-81 was in force and which provided that in case of variation in the age/date of birth recorded in different registers or records statutorily maintained by the management, a workman would be required to be referred to Age Determination Committee/Medical Board for assessment of his age.

As there was variation in date of birth mentioned in two relevant records, the management on its own in the year 1987 in the light of the aforesaid policy decision contained in the said circular considered it appropriate to refer the workman to Special Apex Medical Board for assessment of his age. Such decision taken by the management was quite in conformity with the policy decision of JBCCI which are being followed in Coal Industry and so the same cannot be reasonably challenged. As the concerned workman did not produce the matriculation certificate or any document whatsoever in support of his actual date of birth till that time there was no alternative for the management but to refer the workman to Apex Medical Board in view of discrepancy or variation in the record. The workman appeared before the Board and put his signature also in the medical report but now his stand is that he was forced to appear before the Board and the Board did not examine him clinically or scientifically. Rather as per the evidence of the workman simply his height and weight was measured and then he was asked to go away. In this context it is significant to point out that the statements as regards the workman subjected to force or compulsion in the matter of appearance before the Board are in evidence only and not in the written statement. It is not mentioned anywhere that the workman was made to appear before the Medical Board against his wishes or was compelled or forced by the management to appear.

9. It cannot be doubted that the examination of the concerned workman by the Medical Board had assumed

much significance or importance as it was going to be finally decided as to what can be taken to be the actual age of the workman in view of the variation in records. Quite naturally in view of the importance of its finding the medical examination for assessment of age was expected to be done properly, scientifically, meticulously and not casually or just by way of discharging empty formality.

Ext. M-4 is the original report of the Special Apex Medical Board dated 14-12-87 and which contains the signature of the doctors or members of the said Board also. It did not appear from this report whether the workman was examined clinically and scientifically or whether the important test for such purpose, such as, ossification test was done or not and if not done then why the same was not considered necessary, in the report only the marks of identification, his external appearance, his blood pressure, height, weight, colour etc. are mentioned. MW-2 who during the relevant period was posted at Tisra Central Hospital as Medical Superintendent Incharge and who was also one of the members in the said Board has clearly stated in his evidence that ossification test was not conducted. He has said that so far he is concerned he had examined eyes, skin, height, joints etc. only of the concerned workman and the clinical examination was done by other members. He has also said that he does not recollect as to who, in fact, had conducted the said examination at that time. Further, according to him, he does not recollect whether the concerned workman was examained by the Expert in his presence or not. So, on the basis of such statements it cannot be inferred that proper and scientific examination was done and only then the age was assessed, rather the statement of this witness that no ossification test was done, goes to support the stand of the workman that he was not clinically and scientifically examined. It is not that only on the basis of ossification test, the age can be assessed or if the said test is done then only the age of a person can be taken to have been rightly assessed but at the same time it cannot be disputed that ossification test is considered to be a very important test for such a purpose, as has also been held in a decision of Hon'ble Patna High Court reported in 1996 BBCJ-55, particularly in the instant case where there was discrepancy or variation in the mentioning of date of birth in the service records and the Medical Board was of the view that the concerned workman was aged about 52 years as on that date i.e. much below the age as mentioned in Form 'B' or CMPF record, it was just and proper to conduct ossification test, X-ray of bones etc. In order to confirm the said finding or for the purpose of coming to a conclusive opinion as regards the age of the concerned workman.

10. Thus, in view of all the aforesaid considerations and for the reasons given hereinabove, the action of the management in referring the workman to Special Apex Medical Board for actual assessment of his age cannot be held to be unjustified, but at the same time under the exceptional circumstances of this case, the manner in which the assessment of age was done by the Medical Board, cannot be held to just, proper and reasonable. Now, two options are there for the management. Either it may examine all the documents that may be furnished by the concerned workman in support of his age and may take a decision in accordance with law or in case if it is not satsified with the documents furnished by the concerned workman then it may ask the concerned workman to undergo medical examination before the Apex Medical Board and to take final decision thereafter with regard to the age of the concerned workman and communicate the same to the concerned workman forthwith. In case of a decision in favour of the concerned workman, he would be required to be reinstated, if found below the age of superannuation, with the wages of intervening period. In case if it would be found that the concerned workman would have worked for some more months or years before his actual superannuation and now cannot be reinstated in view of attaining of age of 60 years already by him, then he would be required to be paid wages for the intervening period.

11. The award is, thus, made hereunder :

The action of the management of Ghanoodih Colliery under Bastacolla Area of M/s. B.C.C.Ltd. in referring the concerned workman to Special Apex Medical Board for assessment of age is justified, but its acceptance of the age assessed by the Board as final is not justified and the management should either make necessary correction in the service record of the concerned workman after having been satisfied with the documents submitted by the concerned workman or in case if it is not satisfied with those documents then it should refer the concerned workman once again to the Special Medical Board for fresh assessment of his age, for taking a final decision in the said regard. Consequently the concerned workman would be required to appear before the management within 30 days of the publication of this award and he would submit all his relevant documents showing his actual age. Within one week from that date the management would be required to take final decision on the said aspect and the same would be required to be communicated to the concerned workman within ten days from the date of said order or decision. By way of the said communication either the management would be informing about the acceptance of date of birth as disclosed by the concerned workman or would be asking him to appear before the Special Apex Medical Board for assessment of his age on a given date fixed for that purpose. If the concerned workman would be asked to appear before the Medical Board then he would be required to appear on the date fixed and within one week from the holding such medical examination the management would be required to take a final decision and further would be required to communicate the said decision to the concerned workman at the earliest. Further actions of the management would be in accordance with the observations made in the aforesaid concluding para of this award.

In the circumstances of the case, however, there would be no order as to cost.

S.H. KAZMI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 416.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II धनबाद के पंचाट (संदर्भ संख्या 10/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2003 को प्राप्त हुआ था।

[सं. एल-20012/310/96-आई.आर. (सी.-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/98) of the Central Government Industrial Tribunal II Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 03-01-2003.

[No. L-20012/310/96-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. Biswas : Presiding officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947.

Reference No. 10 of 1998.

PARTIES : Employers in relation to the management of Barora Coal Washery of M/s. B.C.C. Ltd. and their workman

APPEARANCES :

On behalf of the workman : None.

On behalf of the employers : Shri R.N. Ganguly, Advocate.

State : Jharkhand

Industry : Coal.

Dated, Dhanbad the 10th December, 2002

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/310/96-IR (Coal-I) dated the 31st December, 1997.

SCHEDULE

"Whether the action of the management of Barora Coal Washery of M/s. BCCL in denying to accept the resignation of Smt. Chandoo Kamin Wagon Loader under V.R.S. (F.) is justified? If not, to what relief is the concerned workman entitled?"

2. The case of the concerned workman according to W.S. submitted by the sponsoring union on her behalf in brief is as follows :—

The sponsoring union submitted that Special Voluntary Retirement Scheme for female employees was circulated along with letter No. BCCL/GM(P)/PS/95-8188-288 dt. 12-4-95. In response to that circular the concerned workman who was a wagon loader submitted her resignation to the management to accept the same with a prayer to give employment to the dependent son in her place. They submitted that basic purpose behind the said scheme was to get rid of all the female employees who were not gainfully employed should be released and in their place employment should be given to their dependent son in order to generate more productive force. They disclosed that the concerned workman at the time of tendering resignation under the said scheme vide letter dt. 29-5-95 submitted all necessary papers and documents in proof of genuinity of the claim of her dependent son. The said scheme was in operation from April, 1995 to September, 1995 and the upper age limit was fixed at 58 years to submit resignation by any female employee. It has been submitted by the sponsoring union that on the date of tendering resignation the concerned workman was 56 years 4 months and 28 days old.

3. They alleged that the management with some ulterior motive neither accepted the resignation of the concerned workman nor provided any employment to the dependent son in view of the scheme introduced by the management. Accordingly they raised an Inudstrial dispute before the ALC(C) for conciliation which ultimately resulted reference to this Tribunal, forward.

4. The management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in the W.S. on behalf of the concerned workman. They admitted in the W.S. that a special voluntary retirement scheme for female employees was introduced on 12-4-95 for a short period in order to retionalise/improve manpower structure against the actual requirement in BCCL and also for generating a productive labour force against such female employees who are not being gainfully employed. They submitted that inspite of introducing the said scheme they as per para 14(3) of the aforesaid scheme reserved the right to reject the candidature of any female employee applied for taking the privilege of the said scheme. They disclosed that as it was a discretion of the management to reject the claim of any

female employee for obvious reason they could not accept the resignation of the concerned workman along with many other female employees. They further submitted that as the concerned workman has superannuated from her service with effect from 1-1-99 the represent claim is not sustainable in the eye of law. Accordingly they have submitted their prayer to pass award rejecting the claim of the concerned workman.

5. The points to be decided in this reference are :—

"Whether the action of the management of Barora Coal Washery of M/s. BCCL in denying to accept the resignation of the concerned workman Smt. Chandoo Kamin Wagon Loader under V.R.S.(F) is justified? If not, to what relief concerned the workman is entitled?"

FINDINGS WITH REASONS

6. It is seen from the record that the concerned workman did not examine any witness in order to substantiate his claim inspite of getting sufficient opportunities. Accordingly the case was taken up for ex parte hearing and the management in order to substantiate their claim have examined one witness i.e. MW-1.

7. Now let us consider if the concerned workman in view of the claim made in the W.S. is entitled to get any relief or not. It is admitted that the concerned workman was a permanent wagon loader posted at Barora Coal Washery. It is also admitted fact that the management introduced Voluntary Retirement Scheme for their female employees below the age of 58 years in the year 1995 for a period of six month from 12-4-95. It is also admitted fact that in response to the V.R.S. the concerned workman submitted his resignation letter on 29-5-95 for its acceptance along with all particulars for employment of her son who was dependent on her as the scheme opened an option for employment of the dependent son of the workman if her resignation is accepted. According to the management the said V.R. Scheme was introduced for generating a productive labour force against such female employees who are not being gainfully employed.

8. It is the allegation of the concerned workman that in spite of tendering resignation as per the said scheme the management neither accepted the same nor provided employment to her son without assigning any reason though she submitted her application fulfilling all the conditions. She alleged that such decision of the management was not only illegal, arbitrary but also against the principle of natural justice.

Admitting the fact of non-acceptance of the resignation letter tendered by the concerned workman the management submitted that acceptance of resignation was not obligatory on their part and for which they did not accept the resignation, submitted by the concerned workman along with other workmen. In support of their claim they relied on clause 14(3) of the Scheme wherein it has been clearly mentioned that the management holds the right to reject any such application. Management further submitted that though the resignation tendered by the concerned workman was not accepted she was allowed to perform her job till the date of her superannuation. They disclosed that the concerned workman was superannuated from her service with effect from 1-1-99 and by this time she has received all the dues. It has been further disclosed by them that question of giving employment to her son did not arise as her resignation was not accepted as per the scheme.

10. I have considered clause 14(3) of the V.R. Scheme. The said clause has clearly mentioned that the management reserved the right to reject any application of V.R. submitted by the concerned workman. It is seen that the management relying on the claim rejected the application for V.R. submitted by the concerned workman. It is seen that the management was not obligated to accept resignation of any workman. Accordingly onus on the concerned workman to establish that the management committed illegality or took arbitrary decision in rejecting her application. It transpires that in spite of getting sufficient opportunities the concerned workman has failed to adduce any evidence with a view to substantiate the claim in question.

11. Question of giving employment to the dependent son by the management is co-related with the acceptance of resignation under V.R. Scheme. As the management rejected the application of the concerned workman and also as in view that position the concerned workman worked till the date of her superannuation there was no scope to give employment to her son. As the acceptance of application for V.R. was discretionary there is no scope to say that the management by refusing to accept the application of the concerned workman committed any illegality. Accordingly after careful consideration of all the facts and circumstances I hold that the concerned workman is not entitled to get any relief.

In the result, the following Award is rendered :—

"The action of the management of Barora Coal Washery of M/s. BCCL in denying to accept the resignation of Smt. Chandoo Kamin Wagon Loader under V.R.S.(F) is justified. Consequently the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 412.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-2003 को प्राप्त हुआ था।

को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-01-2003 को प्राप्त हुआ था।

[सं. एल-20012/281/97-आई.आर. (सी.1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 417.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/98) of the Central Government Industrial Tribunal-I, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CCL and their workman, which was received by the Central Government on 06-01-2003.

[No. L-20012/281/97-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1) AT DHANBAD.

In the matter of a reference under Sec. 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 22 of 1998

PARTIES : Employers in relation to the management of Bhurkunda Colliery of M/s. C.C. Ltd.

AND

Their Workman

Present : Shri S.H. Kazmi,
: Presiding Officer.

APPEARANCES :

For the Employers : Shri D.K. Verma, Advocate.

For the Workman : None.

State : Jharkhand

Industry : Coal.

Dated, the 23rd December, 2002

AWARD

By Order No. L-20012/281/97-IR (Coal-I) dated 15-05-1998 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :—

SCHEDULE

"Whether the demand of the Union to set aside the dismissal order of Sh. Jitan and also to restore his service from 1978 till his death i.e. 1983, and payment of back wages and other benefits is proper and justified? If so to what relief is the workman entitled?"

2. It appears from the record that this reference was registered on 19-6-1998 and thereafter notice was sent to the parties and several adjournments were granted from time to time, particularly for the appearance of the workman/sponsoring union for filing of written statement on behalf of the workman.

At one stage again registered notice was ordered to be sent to the workman, the compliance of which was made immediately but even then no significant development could take place. On the last date i.e. 5-11-2002 Sri D. Mukherjee who appears for the sponsoring union in different cases, appeared and prayed for granting one adjournment by way of last chance for filing of written statement on behalf of the workman. He submitted that in the meantime he would ascertain whether the concerned workman or the union is still interested in pursuing the present reference or not and then on the next date either he would be taking step by way of filing written statement and the authority or would be making necessary submission in the aforesaid regard. Sri D. Mukherjee is not present today but his junior, Sri K. Chakravarty appeared and submitted that effort was made but no response has been made so far either by the workman or the union and so this Tribunal is at liberty to pass any appropriate order.

It is evident from the past developments as noticed above that the workman/sponsoring union is now least interested in pursuing this reference. In such circumstances it is absolutely needless and would be sheer wastage of time if this case is allowed to remain pending for any longer.

Thus, the reference case is finally disposed of.

S.H. KAZMI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 418.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 121/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2003 को प्राप्त हुआ था।

[सं. एल-20012/269/95-आई.आर. (सी.1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 418.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 121/96) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 03-01-2003.

[No. L-20012/269/95-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT

Shri B. Biswas,

Presiding Officer

In the matter of an Industrial Dispute under Sec. 10(1)(d) of the I.D.Act, 1947.

Reference No. 121 of 1996

PARTIES : Employers in relation to the management of Bhowra(N) Colliery of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the workman	: S. N. Goswami, Advocate.
On behalf of employers	: Shri S. N. Sinha, Advocate.
STATE	: Jharkhand
Industry	: Coal.

Dated, Dhanbad, the 16th December, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-20012/269/95-IR(C-I). dated, the 26th September, 1996.

THE SCHEDULE

" Whether the action of the management of M/s. Bharat Coking Coal Limited in dismissal from service of Shri Jagdish Bhuia, D.C. Loader of Bhowra (N) U.G. Mines of M/s. BCCL is justified ? If not, to what relief is the concerned workman entitled ?"

2. The case of the concerned workman according to the W.S. submitted by him in brief is as follows :—

The concerned workman submitted that he was appointed at 16 incline of Bhowra (N) Colliery under Bhowra Area No.XI of M/s.BCCL as Miner/Loader in the year 1981. Since the date of employment he was in continuous service maintaining his service record without any stigma. He submitted that owing to his serious illness during the month of January, 1983 he could not discharge his duties and the matter of his ailment was duly informed to the management by him. After recovery from his illness when he reported to the management for resumption of his duties he was not allowed to join to his place of work. On the contrary the management dismissed him from his service vide order No. 1483 dt. 14/15-3-90 without any chargesheet or departmental enquiry. He alleged that his order of dismissal from his service without any charge or enquiry or without giving any notice under Section 25F of the I.D.Act was of utter violation of law and against the principles of natural justice. He disclosed that thereafter he submitted several representations before the management for consideration of his order of dismissal but the management did not do anything. Hence this case.

3. The management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegations which the concerned workman asserted in his W.S. The management submitted that the concerned workman was an employee of Bhowra(N) Colliery as D.C. loader. He was chargesheeted for long absentism with effect from January, 1985. As such long absentism amounts to misconduct under the certified S.O. of the Company dated 17-8-88, a chargesheet was issued to him with direction to give his reply. It has been alleged that as the concerned workman did not give any reply to the chargesheet the management decided to hold an enquiry against him and appointed Shri S.K. Sinha as E.O. to conduct enquiry proceeding against the concerned workman. The said enquiry officer after taking charge of the enquiry proceeding issued notice to the concerned workman by Regd. Post with A/D as well as through messenger. They further alleged that inspite of receiving notice sent through messenger the concerned workman did not care to face the enquiry. Accordingly the E.O. conducted the enquiry exparte against the concerned workman in relation to the charge in question and after completing the enquiry submitted his reply holding the concerned workman guilty. On the basis of the report submitted by the E.O. the disciplinary authority issued order of dismissal against the concerned workman. The management submitted that sufficient opportunities were given to the concerned workman to appear before the Enquiry proceeding but the concerned workman did not consider necessary to do so. The charge levelled against the concerned workman was duly established against him in course of enquiry proceeding and after careful consideration of the report of the enquiry officer they issued with order of dismissal. Accordingly they denied the fact that they committed any gross illegality in dismissing the

concerned workman from his service. They also denied the fact that they violated the principle of natural justice in this regard. Accordingly the management submitted their prayer rejecting the claim of the concerned workman.

4. The points to be decided in this reference are :—

" Whether the action of the management of M/s. Bharat Coking Coal Limited in dismissal from service of Shri Jagdish Bhuia, D.C. Loader of Bhowra (N) U.G. Mines of M/s. BCCL is justified ? If not, to what relief is the concerned workman entitled ?"

5. DECISION WITH REASONS

It is seen from the rocord that before taking up hearing of the instant case on merit hearing was made to consider if the domestic enquiry held against the concerned workman was fair, proper and in the accordance with the principle of natural justice. In course of domestic enqiry the managernent examined the E.O. and he was fully cross-examined by the concerned workman. However, the concerned workman did not adduçe any evidence in order to rebut the claim of the management. After hearing both sides vide order No. 35 dt. 8-5-2002 it was observed that domestic enquiry conducted against the concerned workman was fair, proper and in accordance with the principles of natural justice. Aceordingly at this stage their is no rcason to reopen the issue against. Here the point for consideration is whether the charge levelled against the concerned workman under clause 27 (16) of the Certified S.O. has duly been established against the concerned workman or not and if so is there any scope to re-consider the order of punishment inflicted upon the concerned workman according to Section 11A of the I.D. Act. Considering the facts and circumstances I find no dispute to hold that the concerned workman was appointed as Miner/Loader at 16A incline Bhowra (N) Colliery under Bhowra Area No. XI. The specific allegation of the management is that since January, 1985 the concerned workan started absenting from duty without informing the management continuously and as a result they issued a chargesheet vide Order No.BCCL/PS/88(N)/15/5 dated 17-8-88 (Ext. M-2) against the concerned workman. It is the further allegation of the management that inspite of giving opportunity to the concerned workman neither he appeared nor he submitted any reply. Even the E.O. issued notice to him by Regd. post as well as through messenger but the concerned workman inspite of receiving notice which was sent through messenger did not consider necessary to appear with a view to face enquiry proceeding. The concerned workman on the contrary admitting his absence since January, 1985 submitted that as he fell ill he could not attend his duties. He further submitted that he informed the management about his illness and after recovery from his illness when he returned back to his place of work with a view to resume his duty he was not allowed by the management to resume his duties. On the contrary he was dismissed from his service. The concerned workman remained silent actually when he came to his place of work with a view to resume his duties. As such it cannot be ascertained if at all he met the management with the intention to resume his duty or not. It is seen from the chargesheet marked as Ext.M-2 that the same was issued on 17-8-88. Therefore, it is clear that from January, 1985 till that date the concerned workman remained absent and did not return back to his place of work with a view to resume his duty i.e. he remained absent continuously for more than 3 years. The management issued chargesheet against the concerned workman for committing misconduct according to the provision as laid down in Clause 27(16) of the Certified Standing Order Clause 27(16) speaks as follows :—

27(16) Continuous absence without permission and without satisfactory cause for more than 10 days.

Accordingly there is sufficient reason to believe that the management did not commit any illegality in issuing chargesheet to the concerned workman for his long absence. It is the claim of the concerned workman that owing to his illness he could not attend his duty. It is his further contention that he reported the incident of his ailment to the management. In course of hearing the concerned workman did not consider necessary to produce a single scrap of medical paper in support of his claim that actually he was lying ill continuously for such long period and for which he could not attend his duties. The concerned workman did not consider necessary to submit any copy of his petition to show that he reported to the management about his ailment. Accordingly there is no scope at all to accept the contention submitted by the concerned workman. I have considered the enquiry report and other relevant papers relating to the enquiry proceeding carefully and the enquiry officer in his report marked as Ext.M-7 has clearly assigned his reason why he found the concerned workman guilty to the charge. On careful secrutiny I have failed to find out any discrepancy reline on which there is scope to say that the E.O. submitted any perverse report in this regard. Accordingly I hold that the charge which was brought against the concerned workman has well been established in course of hearing by the management.

6. Now the point for consideration is if the order of dismissal issued against the concerned workman deserves any modification as per Section 11A of the I.D.Act, 1947. The disciplinary authority after considering the report the E.O. carefully accepted the same and issued order of dismissal vide letter No. P-5/50(N)/UG.Mines/Dismissal dt. 14/15-5-90 marked as Ext.M-8. It is seen that continuously for more than three years the concerned workman remained himself absent without signing any reason or giving any information to the management. The plea of his ailment

could not be substantiated by adducing any cogent medical papers. Accordingly there is reason to believe that the said plea was taken only to defend his claim. Such long absence of a workman from duty is to be considered with all seriousness. It is seen that showing his thumb finger to the management the concerned workman went on leave without giving any intimation or assigning any reason and remained on unauthorised leave for such long period. Such conduct of the concerned workman should be considered as serious misconduct in the interest of employer. The concerned workman did not consider necessary to maintain discipline of the company while he was employed. He did not consider necessary to show minimum gesture to intimate the reason of his absence to his employer. Such attitude of the concerned workman should be considered as serious dereliction of his duty. As such after careful consideration of all aspects I find no reason to modify the order of his dismissal according to the provision as laid down under Section 11A of the I. D. Act. In the result, the following Award is rendered :—

> " The action of the management of M/s. Bharat Coking Coal Limited in dismissal from service of Shri Jagdish Bhuia, D.C. loader of Bhowra(N) U.G. Mines of M/s. B.C.C.L. is justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 419.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I धनबाद के पंचाट (संदर्भ संख्या 19/83) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-1-2003 को प्राप्त हुआ था।

[सं. एल-20012/212/82-डी-III(ए)/आई.आर. (सी.1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 419.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/83) of the Central Government Industrial Tribunal I Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 3-1-2003.

[No. L-20012/212/82-D-III(A)/IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD.

In the matter of a reference under sec.10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 19 of 1983.

Parties : Employers in relation to the management of Muraidih Colliery of M/S. B.C.C.Ltd.

AND

Their Workmen.

Present : Shri S.H. Kazmi,

Presiding Officer.

Appearances :

For the Employers : Shri B.M. Prasad, Advocate.

For the Workmen : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

State : Jharkhand

Industry : Coal.

Dated, the 26th December, 2002

AWARD

By Order No.L-20012/212/82/D-III(A) dated, the 24th/31st March, 1983 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of Sec.10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

> "Whether the demand of the workman of Muraidih Colliery of M/S. Bharat Coking Coal Limited, Post Office Nawagarh, District Dhanbad for re-instatement of the workman listed in Annexure below is justified? If so, to what relief are these workmen entitled?"

2. Precisely, the case of the sponsoring union is that all the 72 concerned workmen were originally appointed against the permanent vacancy, by the management in the job as mentioned in the order of reference and they all were appointed as permanent workmen in permanent nature of job. It has been said that the concerned workmen absented from duties sometime in the year 1974-75 and prior to that they had rendered continuous service and had put in 190/240 days attendence. It has also been said that the concerned workmen reported for duties, but they were not allowed to resume their duties though their names were never removed from muster roll. Further, the case is that a decision was taken in the Central Consultative Committee on 19-12-80 to employ all delisted casuals who had put in only 75 days during the calendar year 1973 to 1976 and

M/S. B.C.C. Ltd. also issued a circular as per policy decision to employ all such workmen. It is said that in pursuance of the said policy decision a large number of workmen have been employed but in view of the said decision when the concerned workmen demanded reinstatement and submitted a list also of the concerned workman, the management made no response. Further, it has been said that due to bias the management of Barora Area did not allow the concerned workman to resume their duties inspite of the verification of their particulars from the statutory register and so ultimately industrial dispute was raised by the union before the A.L.C. (C), Dhanbad, regarding reinstatement of the concerned workmen on the ground that they were permanent workmen and they had put in 240 days attendance, but even then they were removed without compliance of the provision of sec. 25-F of the Industrial Disputes Act. Lastly, it has been said that the action of the management in denial employment to the concerned workman was illegal, arbitrary, unjustified and discriminatory and the same also smacks of anti-labour policy of the management.

3. The management's case, on the other hand, as disclosed in its written statement is that the present reference is vague and indefinite as because it does not give the form 'B' number and Identity Card number for proper verification of the concerned workmen. Similarly it does not give identification of the concerned persons, such as. father's name and address and so it is difficult to say if the union has raised this dispute on behalf of genuine workmen or on behalf of certain fictitious persons who intend to enter into the services by impersonation. It has also been said that certain workmen bearing some of the names included in the annexure to the schedule had worked prior to 1975 in some capacity or other and left their employment either submitting resignation or without any intimation to the management. It has also been said that the demand of the union is not based on genuine ground and the dispute is arising out of a stale demand which is liable to be summarily rejected. It has also been stated that the concerned persons are not entitled to any relief.

4. In its rejoinder to the written statement of the workmen also it has been stated that the concerned persons have not given the details of their identity and they are fictitious persons and there was no question of any one of them reporting for duty and the management not allowing them to resume their duties and further the statement is to the effect that the union tried to get false and fictitious persons entered into the services through back-door method and those persons are not entitled to get any relief whatsoever.

In the rejoinder field on behalf of the workmen also several averments and statements made in the management's written statement have either been denied or controverted and it has been reiterated that the demand of the union is genuine demand and is based on real fact and the concerned workmen are entitled for reinstatement with full back wages.

5. In view of the aforesaid stands taken on behalf of the parties it is apparent that the main issue involved that requires consideration for the purpose of disposal of the instant reference is whether the concerned workmen can be taken to have worked and completed 240 days of working in one calendar year prior to 1974-75 in the concerned colliery or not and also whether their services can be taken to have been terminated by the present management or not so as to grant any relief, as prayed for.

6. In support of their respective stands, both the sides have led their oral as well as documentary evidence. Two witnesses have been examined on behalf of the management and likewise one witness was examined on behalf of the workman. Out of the documents filed Exts. W-1 to W-4 are the lists of the workmen said to have been compiled by the union and Exts. M-1 to M-3 are Form 'B' Register, Identity Card Register and bonus Regiser maintained by the management.

7. As regards engagement of the concerned workmen in the concerned colliery the statement in the written statement of the workmen is this much only that all the workmen were appointed as permanent workmen in the permanent nature of job. It has not been mentioned anywhere as to when they were appointed and whether any appointment letter was issued to them or not. The only witness who has been examined on behalf of the workmen (WW-1) who happens to be also one of the concerned workmen has not said in his evidence either about his appointment or the appointment of others as permanent workmen or about issuance of any appointment letter to them. Simply he has said that he was working in Muraidih Colliery sometime in the year 1971 to 1972 as Loader. He has not said since when the other concerned workmen were working. His statement about his working since 1971 to 1972 has also been subsequently introduced as the same has not been disclosed in the written statement. About appointment letter however in his cross-examination he has said that they also got the appointment letter but was retained by the management in the office of the colliery. Than, upon question being asked he has said that they have got no receipt to show that the management retained their appointment letter. Apart from this that such statement is not there in the written statement. It is difficult to accept as to why the management would have taken back and retained the appointment letters of the concerned workmen if the same would have been issued to them earlier.

Further, in the written statement it has been specifically pleaded that all the concerned workmen absented from duty sometime in the year 1974-75 and when they reported for duty they were not allowed to resume their duties though their names were never removed from

the muster roll. Vagueness is apparent on the face of such statement as neither any specific date, month or the year has been mentioned since when they absented from duties nor it has been disclosed as to for how long and uptil when they absented from duties. It is also not disclosed as to when they reported for duties or when they were not allowed to resume their duties. Strangly, despite the aforesaid definite stand taken in the written statement the workmen's witness (WW-1) during his evidence came out with a different story or the stand on the aforesaid aspect. During his examination-in-chief itself he has said that some of them were stopped from duty in the year 1974 and some from 1975 and that they were stopped from duty on the ground of absenteeism. He has further said that the management before stopping them from duty did not serve them with any notice nor did it spell out the reason for stopping them from duty. It is apparent that he introduced the new case in course of his evidence. It is not the case in the written statement that they were ever stopped from their duties by the management on any ground whatsoever, rather the definite case was that they all absented from duty from the year 1974-75 and when they reported for duty they were not allowed to join. Besides the vagueness in the pleading and evidence as noticed above, indeed it is a curious circumstance which shakes the creditibility and genuineness of claim of the case of the concerned workmen.

It is also to be noticed that in the written statement of the workman the statement has been made that prior to absenteeism the concerned workmen had rendered continuous service and had put in 190/240 days attendance prior to the date of absenteeism. Quite apparently this statement is also vague as it has not been disclosed that prior to their absenteeism since when uptil when or during how much total period the workmen rendered continuous service of 190/240 days. The workmen's witness in his evidence in the aforesaid context has said that from 1971 to 1972 they had worked continuously till they were stopped from duty and each year they had completed 240 days attendance or more. It has already been noticed above that the statement of working from 1971-72 has been made for the first time during evidence and further even in his evidence the workmen's witness though made the aforesaid statement but failed to give specific date and month of their stoppage from duty by the management. Further he failed to disclose as to how many out of them were stopped from duty in the year 1974 and how many were similarly stopped in the year 1975. Significantly for the purpose of showing their continuous engagement for the aforesaid period no any document has been brought on record on behalf of the workmen.

It is also significant to notice that the written statement of the workmen is completely silent about the entry of the necessary particulars of the concerned workmen in Form 'B' Register at the time of their appointment. There is also no mention about the issuance of any Identity Card or Bonus Register or payment of any bonus to them or about the provident fund contribution or about the opening of CMPF account in their respective names. During his evidence the workmen's witness has also not said anything about the entry of his name or others in Form 'B' Register. In course of his cross-examination he has said that they got bonus from the management but they are not favoured with the bonus card. He further stated that they were never subscriber to provident fund and they have got no receipt to show that they were members of provident fund. He has even gone to the extent of saying which certainly bear much importance as far as the present case is concerned, that they have got no paper to show that they ever worked in the colliery. According to him, all their papers have been retained in the office of the colliery and then upon question being asked has said that they have got no receipt or paper to show that their papers were taken away by the management. Again such statement made by this witness regarding retention of their documents by the management is difficult to believe or accept. In the written statement of the workmen there is no mention about mode of payment of wages to the concerned workmen during the period of their engagement and it is also not mentioned as to how much they used to get for the works being performed by them. It is only during his evidence the workmen's witness WW-1 has said that they used to get Rs. 18/- to Rs. 20/- per week as their wages though in support of this statement no any document has been filed. Therefore, apart from the vagueness, variation and contradictory or conflicting stand as highlighted above there is no document produced from the side of the workmen to show that they were stopped from their duties or was not allowed to join in the year 1974-75 and prior to that they had put in the attendance of more than 190/240 days in one calender year in the service of the management of the concerned colliery. The concerned workmen have not produced Identity Card or wage slips or Bonus Cards or any document to show that they were appointed as permanent workmen as miner/loader or in any other capacity.

8. Much stress has been made on behalf of the workmen upon the four documents filed and exhibited as Ext. W-1 to W-4 which contain some signatures also which have been marked as exhibits. By placing reliance upon those documents it has been asserted that it is clear out of the same that the concerned workmen were the workmen of the management and particulars were also being maintained by the management. It has also been contended that those documents bearing the signatures of the management's official also (MW-1) who in course of his evidence has identified and proved those signatures. Exts. W-2 to W-4 are the handwritten lists containing the details of the workmen, prepared and compiled by the sponsoring union for the purpose of the present case. Ext. W-1 is the letter addressed to Dy. Personnel Manager, Barora Area and is

sent by the Personnel officer of Muraidih Colliery alongwith which original of the said list submitted by the union was forwarded to the Dy. Personnel Manager for needful and those three sheets of the list contain the signature of MW-1 as well as signatures of others also and MW-1 in course of his evidence has identified his signatures and in course of his evidence the aforesaid document has been marked exhibit.

Those lists are said to have contained the names of all the concerned workmen but it is more than obvious from the same that the complete or necessary details of all the workmen have not been furnished. The column which is meant for mentioning the date of appointment is totally blank and out of the total number of persons the date of appointment of only three persons are mentioned whose names figure at Sl. No. 3 to 5. Similarly form 'B' number and Identity Card number of only few persons have been mentioned and likewise Provident Fund numbers of only 11 persons have been mentioned. Similarly the date of birth of only few persons have been mentioned in the said list and mostly it is mentioned "not recorded". Further, it is significant to notice that there is one column with the head "date of struck off". Under that column the dates are mentioned only as against the names of 18 or 19 persons and all those dates are of the years 1976, 1977 and 1979. Furhter, it is significant to point out that the persons whose names are from Sl.Nos. 66 to 70 have been shown to have resigned in the year 1977-79. About the person whose name is mentioned at Sl.No. 71 it is mentioned under the same head that he was transferred to Jealgora in January, 1977. So far two other persons or workmen are concerned whose names are at Sl.Nos. 72 and 73 it is mentioned under the same column that they were not on the roll of the colliery. The parentage and address also of several workmen are not mentioned in those lists. Thus, it becomes more than obvious that it is not safe to make any reliance upon the aforesaid nature of documents, notwithstanding the fact that the same contain the signature of one of the official of the management. Merely on the basis of such nature of documents it cannot be conclusively gathered that the concerned workmen were the workmen of the colliery and they worked continuously for 240 days or more in one calendar year prior to 1974-75, as claimed. It is also to be noticed that the aforesaid documents do not find corroboration from the statement of one of the concerned workman (WW-1). He has specifically said in his evidenced, as noticed above, that they never subscribed to provident fund and have got no receipt to show that they were members of provident fund, but in the list the provident fund numbers of 11 workmen are mentioned. Furhter neither in the written statement nor in the evidence any statement has been made about the entry of names of the concerned workmen in Form 'B' Register or issuance of Identity Card to them but in the aforesaid list the Form 'B' number and Identity Card number of some of the workmen are mentioned.

9. From the side of the management Form 'B' Register, Bonus Register and Identity Card Register of the concerned colliery have been filed for the purpose of showing that in none of them the name of any of the concerned workmen is mentioned and had they been certainly working in the concerned Colliery at any point of time or for any period whatsoever their names would have been certainly entered and mentioned in those registers. In this context the assertion from the side of the workmen is that those register are firstly not the registers of the concerned Muraidih Colliery, rather the same appear to be of different colliery and secondly as per the case of the workmen they had worked upto 1974-75 and the takeover of the colliery was made sometime in the year 1973 and so the management should have produced that Form 'B' Register which was being maintained by the erstwhile owner of the said colliery and despite the step being taken on behalf of the workmen the management did not produce the same. It has been urged that on account of non-production of some material documents adverse inference has to be drawn against the management as it had tried to conceal the real fact. This submission made on behalf of the workmen appears to be devoid of substance. Having gone through all those registers produced from the side of the management there does not appear to be any reason to accept the contention of the workmen that they are not related to the concerned colliery. As far as the production of the aforesaid Form 'B' Register is concerned there is no mention in the written statement of the workmen nor there is any statement even during evidence that there was any Form 'B' Register being maintained by erstwhile owner of the concerned colliery or the names of the concerned workmen were entered in any Form 'B' Register pursuant to their appointment, being maintained by the erstwhile owner of the colliery. It is true that Form 'B' numbers of some of the workmen are mentioned in the aforesaid documents (Exts. W-2 to W-4) but as observed earlier also neither there is any mention about the same in the written statement nor in the statement of the workmen's witness during evidence.

10. It is needless to mention that in the instant case the claim of the concerned workmen that having been appointed in the concerned colliery, by the year 1974-75 they had already put in attendance of 190/240 days and so they could not have been removed from service or could not have been terminated without making the compliance of the provisions of Sec.25-F of I.D.Act, 1947. Besides all the above that has been observed, by now it is well settled and the Hon'ble Supreme Court in a recent decision reported in 2002(1) LLJ.1053(SC) (Range Forest Officer Vs. S.T. Hadimani) has clearly held that the onus for establishing the fact that a workman has worked continuously and has put in attendence of more than 240 days, is upon that particular workman or the union who represents his case on his behalf and it is not for the management to prove and establish that the assertion made

in that regard are incorrect or unjustified. In the instant case, as it has already been observed above the union or the workman though has taken the aforesaid stand and has raised the claim on that basis but has failed to substantiate the same through cogent material and there is nothing worth mentioning in the record on the basis of which it can be inferred that the concerned workmen worked for the aforesaid period under the management being its permanent employees.

It has been contended on behalf of the workmen that in para 4 of its written statement the management has admitted the fact that the concerned workmen were working in the colliery prior to 1975 and so the same bears much significance as far as the claim of the concerned workmen is concerned. Upon the perusal of contents of the said para of the written statement, however, I do not find anything like that, as contended. In para 3 of the written statement the statement have been made as regards vagueness and indefinite nature of reference and also about the raising of the dispute on behalf of certain fictitious persons. Then in para 4 of the written statement the statement has been made that certain workmen bearing some of the names included in the annexure to the schedule had worked prior to 1975 in some capacity or the other and left their employment either submitting resignation or without any intimation to the management. It cannot be gathered out of these statement that there is admission on the part of the management as regards the working or engagement of the concerned workmen of this case prior to 1975 in the concerned colliery. The mention is about only certain workmen bearing some of the names included in the annexure and the management has already challenged and asserted its stand about the identity of the concerned workmen as mentioned in para 3 of the written statement and its rejoinder also.

11. Thus, in view of all the aforesaid, there is no alternative but to hold that the claim of the concerned workmen for their reinstatement in the services of the management cannot be held to be justified and consequently they are not entitled for any relief whatsoever.

12. The award is, thus, rendered as hereunder:—The demand of the workmen, whose names are mentioned in the annexure to the order of reference, for their reinstatement is not justified and they are not entitled to any relief whatsoever. In the circumstances of the case, however there would be no order as to cost.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 420.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 68/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-1-2003 को प्राप्त हुआ था।

[सं. एल-20012/158/92-आई.आर. (सी.1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi the 7th January, 200

S. O. 420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 68/93) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CCL and their workman, which was received by the Central Government on 3-1-2003.

[No. L-20012/158/92-IR (C...]

S. S. GUPTA, Under ...

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

SHRI B. BISWAS
Presiding Officer

In the matter of ...
Section 10(1)(d) of the ...
Reference No. ...

PARTIES: Employers in relation to the management of Kathara Area of M/s. C.C.L. ... and their workman

APPEARANCES:

On behalf of the workman : Shri D. Mukherjee, Advocate

On behalf of the employers : Shri ... Advocate

State : Jharkhand

Industry : Coal.

Dated, Dhanbad the 4th Dec...

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to the Tribunal for adjudication ... L-20012/158/92-IR(...

SCHEDULE

"Whether the premature retirement of Shri Jiblal Rana, Cat. IV Drilling Camp, Kathara Area of CCL is Justified? If not, to what relief the concerned workman is entitled?"

2. The case of the concerned workman according to the W.S. submitted by the sponsoring union on his behalf in brief is as follows :—

The sponsoring union in the W.S. submitted that the concerned workman was permanent workman at Central Coalfields Ltd. since 1974. They submitted that at the time of appointment the age of the concerned workman was recorded in the statutory from B. Register. But inspite of the said fact the management did not mention his age in the I.D. Card register relying on the date of birth recorded in the Form B Register. They alleged that the management without assigning any reason and also in violation of the statutory document referred the concerned workman to the medical board for assessment of his age. They further alleged that the medical board in violation of the mandatory direction of the Medical Jurisprudence determined the age of the concerned workman as 57 years as on 28-1-58. They alleged that before determination of the age of the concerned workman by the Medical Board no ossification test of the concerned workman was held. They submitted that ossification test is the correct method by which the age of any person could be determined but without holding such ossification test of the concerned workman the Medical Board just opined that the age of the concerned workman was 57 years as on 28-1-88. It has been further disclosed by the sponsoring union that as per L. T. C record the age of the concerned workman was recorded as 45 years as on 1983 but the management ignoring the age of the said register superannuated him with effect from 29-1-91 by office order dt. 12-7-90 illegally, arbitrarily and violating the principles of natural justice. Accordingly the sponsoring union raised an industrial disputes before the ALC(C) Hazaribagh for conciliation which ultimately resulted reference to this Tribunal for award the concerned workman submitted prayer to pass award directing the management to reinstate him with full back wages till he reaches the age of superannuation as per L.T.C. record i.e 45 years as on 1983 or alternatively if the said age as stated by him is not acceptable to the management he may be referred to the Assistant Civil Surgeon for determination of age as per the medical jurisprudence.

2. The manage ment on the contrary after filing W.S. rejoinder have denied all the claims and allegation which the sponsoring union asserted in the W.S. submitted on behalf of the concerned workman. The management submitted that the concerned workman was initially appointed as Truck Loader at Sarubera Colliery. The said colliery was nationalised under the Coal Mines (Nationalisation) Act. w.e.f. 1-5-73 and after nationalisation it came under the administrative control of M/s. Central Coalified Ltd. During the month of April, 1978 the concerned workman was transferred to Geology Department under the management and thereafter he was posted at Kathara Area of M/s. Central Coalfields Ltd. The management submitted that as there was controversy regarding age/date of birth of the concerned workman the concerned workman was sent to the Medical Board as per Implementation Instruction No. 37 dated 5-2-81 issued by the Joint Bi-partite committee for the Coal Industry, to assess his age. Prior to the issue of the Instruction No. 37 dt. 5-2-81 there was existence in the Coal Industry a system for determination of age of the workmen in disputed cases through age determination committee. The Implementation instruction in question incorporated the same system of determination of age by the age determination committee by clinical examination of the workmen. They submitted that the age determination committee examined the concerned workman along with some other workmen on 28-1-1988 and determined his age as 57 years. Accordingly the date of birth of the concerned wrokman was decided as 28-1-1931. This decision was notified by the Dy. Chief personal Manager (A)/S.E, C.C.L. Ranchi vide office order No. 364/CCL/CA-admn/JR/79/12004-015. A copy of the same was endorsed to the concerned workman. They submitted that the age dispute of the concerned workman was accordingly settled and he was superannuated from his service on his attaining the age of 60 years with effect from 28-1-91. They submitted that the concerned workman did not raise any controversy after his age was determined by the age determination committee as indicated above and he raised such controversy after he was superannuated. Accordingly the claim of the concerned workman finds no basis at all and for which he is not entitled to get any relief according to his prayer. The management accordingly submitted their prayer rejecting the claim of the concerned workman.

3. The points to be decided in this reference are:—

"Whether the premature retirement of Shri Jiblal Rana, Cat. IV Drilling Camp, Kathara Area of CCL is justified ? If not, to what relief the concerned workman is entitled?"

4. DECISION WITH REASONS

It is seen that the concerned workman examined one witness i.e WW-1 in order to substantiate his claim. On the contrary the management examined one witness as MW-1 in order to substantiate their claim also. Considering the facts disclosed in the pleadings of both sides and also considering the evidence of MW-1 I find no dispute to hold that the concerned workman was appointed by the management as Truck Loader at Sarubera Colliery in the year 1974. The said colliery was nationalised and came under the management of CCL

with effect from 1-5-73. The concerned workman was transferred to Geology department in the year 1978 and finally he was posted at Kathara Area under the management. It is the contention of the concerned workman that at the time of his joining as Truck loader under the management his all particulars including his date of birth was recorded in the Form B Register. It is seen from the record that the concerned workman got his appointment as Truck loader in the year 1974 i.e. after nationalisation of Sarubera Colliery. It is the statutory provision under the Mines Act to maintain form B Register wherein all the particulars including the age/date of birth of the concerned workman was recorded. It is the allegation of the concerned workman that the management did not mention his date of birth in his I.D. Card according to the date of birth recorded in the Form B Register. In course of hearing the concerned workman called for the Form B Register from the management but the management did not consider necessary to produce the same. The concerned workman relying on L.T.C register submitted that his age was recorded therein as 45 years on 1983. The said L.T.C. register was also not produced by the management in course of hearing. It is curious to note that the concerned workman did not disclose either in the W.S submitted by the sponsoring union or in course of evidence actually what was his date of birth/ age. He also did not consider necessary to disclose how old he was on the date of his superannuation. It is also curious to note that the management remained silent if the date of birth of the concerned workman was duly recorded in the Form B Register or not. There is reason to believe that there was gross annually in the matter of recording the particulars of the concerned workman in the Form B Register. Had that not been so there was no occasion to sent the concerned workman before the age determination committee for assessment of his age. MW-1 in course of his evidence disclosed that information was sought for from the Personnel Officer Sarubera Colliery if any medical examination for assessment of the age of the concerned workman was ever conducted or not. The reply was given by the Personnel Officer, Sarubera Colliery was in the negative. On the contrary there was a note to the effect that the date of birth of the concerned workman is not available. The letter issued by the Superintendent Geologist and endorsement of the Personnel Officer, Sarubera Colliery in Course of evidence of MW-1 was marked as M-1 and M-1/1. It is the allegation of the sponsoring union that there was no reason to send the concerned workman before the age determination committee for determination of his age particularly when date of birth/age was duly recorded in the Form B Register. The management on the contrary submitted that as there was discrepancy in according the age of the concerned workman he was sent before the age determination committee complying with the provision as liad down in the Implementation Instruction No. 37 dated 5-2-1981 issued by the JBCCI, and accordingly the age of the concerned workman was determined by the age determination committee on 28-1-88 and his age was determined as 57 years as on that date. The management in course of hearing has failed to establish that clinical report of the concerned workman submitted by the age determination committee. As such a copy of the said report was marked as for identification. As the document in question was not marked exhibited there is no scope to take cognizance of the said document. It is the contention of the sponsoring union that the age determination committee determined the age of the concerned workman without holding any ossification test which is to be considered as an authentic test in the matter of determination of age. I do not find any reason to raise dispute over the claim of the sponsoring union. Clinically there is little scope to determine the age of any person properly. Authentic test so far the medical jurisprudence is concerned in the matter of determination of age is through ossification test. However, there was scope on the part of the management to establish the clinical report relating to deterermination of age of the concerned workman by examining the Medical Officer who held the clinical test. It is curious enough to note that the management did not consider necessary to examine the Medical Officer who held the said clinical test of the concerned workman and arrived to the conclusion that the concerned workman was 57 years as on 28-1-88. The management submitted that relying on the said report of the age determination committee the dispute was settled and thereafter the concerned workman was superannuated from his service with effect from 28-1-91. They submitted further that after superannuation the concerned workman raised the dispute. On the contrary the submission of the concerned workman appeares to be quite different. Condering the facts and circumstances there is sufficient reason to believe that the concerned workman definitely would not raise the dispute if he accepted his age which was determined by the age determination Commitee. As the management has failed to produce the original report of the age determination commitee relating assessment of the age of the concerned workman at this stage I do not find any scope to consider that his age was at all determined by the said age determination commitee. It is fact that the concerned workman has already been superannuated from his service but it should be borne into mind that the alleged determination of age of the concerned workman was held in the year 1988 and after three years he was superannuated from his service. It is the contention of the representative of the concerned workman that before raising the industrial dispute they took up the matter with the management but the management did not pay any

hced to the representation of the concerned workman, on the contrary illegally and arbitrarily voilating the principles of natura' justice superannuated him with effect from 28-1-91. Considering all the relevant papers I do not find any scope to refute the claim of the representative of the concerned workman in this regard. Accordingly I consider that the sponsoring union did not commit any illegality by raising the dispute after superannuation of the concerned workman. It is expected that the management should maintain transperancy in meeting up any dispute if cropped up. It was the fault of the management that they did not record the age of the concerned workman in the Form B Register or any other statutory register. Every department maintains the service record of the workman. It is also curious to note that in the instant case the management also did not record the age/date of birth of the concerned workman in the service record. On the contrary it is seen that at the fag end of the service carrier of the concerned workman the management sent him before the age determination committee without giving the concerned workman to hear on this point. The age determination committee determined the age on the basis of clinical test. The management has also failed to produce the said report is original. Therefore, if all these aspects are considered carefully there is reason to believe that from the very beginning the management did not maintain any transperancy in the matter of determination of the age of the concerned workman. Accordingly I hold that the age of the concerned workman is required to be re-assessed by the medical board strictly complying with the provision of the Medical jurisprudence and if it is found that the age determination committee has wrongly assessed the age of the concerned workman in that case the management shall be liable to pay all back wages till the actual date of his superannuation to his determined by the Medical Board. In the result, the following Award is rendered.—

"The management is directed to re-assess the age of the concerned workman by Medical Board complying with the strict process of the medical jurisprudence in the matter of determination of age of persons within three months from the date of publication of the Award in the Official Gazette. The concerned workman is directed to contact the management accordingly. After determination of the age of the concerned workman by the medical board if it is found that the age of the concerned workman was wrongly assessed by the age determination committee in that case the management shall be liable to pay back wages to the concerned workman upto the date of his actual superannuation on the basis of the Report of the Medical Board."

B. BISWAS, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 421.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I, धनबाद के पंचाट (संदर्भ संख्या 92/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2003 को प्राप्त हुआ था।

[सं. एल-20012/115/93-आई०आर० (सी. I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 421.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Ref. No. 92/95)** of the Central Government Industrial Tribunal **I, Dhanbad** now as shown in the Annexure in the Industrial **Dispute** between the employers in relation to the Management of ECL and their workman, which was received by the Central Government on 03-01-2003.

[No. L-20012/115/93-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT DHANBAD

In the matter of a reference under sec. 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 92 of 1995

PARTIES : Employers in relation to the management of Barakar Engineering & Foundary Works of M/s. Eastern Coalfields Ltd.,

AND

Their Workmen

Present : Shri S. H. Kazmi, Presiding Officer

APPEARANCES:

For the Employers : Shri B. M. Prasad, Advocate

For the Workman : Shri D. Mukherjee, Advocate

State : Jharkhand Industry : Coal

Dated: the 10th December, 2002

AWARD

By Order No. L-20012/115/93-IR(Coal-I) dated 11-08-1995 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of

Sub-sec. (1) and Sub-sec. (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

> "Whether the demand of the Union for reinstatement/employment with full back wages to Shri Pagal Gorai by the management of Barakar Engineering and Foundary Works of M/s E.C. Ltd., Mugma, Dhanbad, is justified? If so, to what relief is the workman entitled?"

2. The case of the sponsoring union, in short is that the concerned workman, Pagal Gorai, had been working as a permanent workman at Barakar Engineering & Foundary Works of M/s. E.C. Ltd., since long with unblemished record of service. It has been said that he had been absenting from duty due to illness and the same was duly communicated to the management with a prayer to sanction leave. After recovery from illness, it is said, the concerned workman reported for his duty, but unfortunately the management did not allow to resume his duty. Further the case is that when the concerned workman reported for his duty some of so-called well wishers who happened to be officials of the company advised him to apply for employment of his dependent son instead of demanding his own reinstatement. They further told him that due to his illness he was not fit to resume duty and so it would be better for him to make prayer before the management for dependent's employment. On the basis of such advice, it is said that the innocent and illiterate concerned workman represented before the management for allowing his dependent to resume duty and on the advice, the concerned workman was stopped reporting for duty. He was given assurance by the management for positive decision in the aforesaid regard but after the lapse of sometime the management informed the concerned workman that his prayer for employment of his dependent has been turned down by the higher authority. Further it has been said that the concerned workman thereafter raised an industrial dispute before the A.L.C (C) demanding employment of his dependent son. The conciliation proceeding, however, ended in failure and after receiving failure report the concerned Ministry rejected the dispute on the ground that the concerned workman was not delcared unfit by the Company's Medical Board and so there was no question of providing employment to his dependent son. After receiving the aforesaid rejection order it is said that the sponsoring union raised an industrial dispute for reinstatment of the conerned workman with full back wages, but the same was also ended in failure due to adamant attitute of the management. Thereafter the Ministry once again without appreciating the legal position rejected the dispute vide order dated 24-3-94. Subsequent to that, it is said, that the union challenged the said decision of the Government before the Ranchi Bench of Patna High Court and then the Hon'ble High Court by its order dated 7-3-95 directed the Government to refer the dispute for adjudication and accordingly the dispute was referred for adjudication to this Tribunal. It has been said that the action of the management was illegal, unjustified and vindictive in nature and the demand of the union for reinstatement/ employment of the concerned workman with full back wages is legal and justified.

3. The management, on the other hand, apart from raising the preliminary objection in regard to maintainability of this reference on the ground of either no relationship of the employer and employee or the Central Government being not the appropriate Government, has come out with the case as disclosed in its written statement that Barakar Engineering & Foundry Works previously belonged to M/s .Oriental Coal Co. Ltd. which was adjacent to Badjna Colliery which also belonged to the same company. Badjna Colliery was initially taken over by the custodian, Central Government under the Presidential Ordinance for the purpose of management and it was later nationalised under the Coal Mines (Nationalisation) Act, 1973 w.e.f. 1-5-1973. At the time of take over or taking over of non-coking coal mines, it is said, the previous owner refused to hand over the Barakar Engineering & Foundry Works to the Central Government Custodian on the ground that the said establishment was a Factory and not a mine and that it was not a part of Badjna Colliery. The previous owner also contended that the said establishment was not exclusively catering to the need of Badjna Colliery and executing a large numbers of job to the outside parties. It has been said that the previous owner filed a writ petition before the Hon'ble Calcutta High Court opposing the said taken over and the Hon'ble Calcutta High Court allowed the previous owner to function as Receiver pending disposal of the Writ Petition filed by them. It has also been said that while the Barakar Engineering & Foundry Works was under the Receivership a lock out was declared by them w.e.f. 28-1-1980 and it so remain under lock out till 13-11-86. However, it has been said that the Hon'ble Supreme Court by its judgement held that the Coal Mines (Nationalisation) Act, 1973 was constitutionally valid but no specific verdict that the workshop should be handed over to Coal India Ltd./E.C. Ltd. could be passed. Further the case is that the previous owner on their own decided to hand over the aforesaid workshop/establishment to M/s. E.C. Ltd., after Hon'ble Supreme Court's verdict and they did so manifestly for the reason that the workshop had become virtually junk and was found to be a liability to the previous owner. It is also the case that M/s. E.C. Ltd. did not agree to take the liability of previous owner and the said workshop was handed over to M/s. E.C. Ltd. on 14-11-86. It has been said that the present management has not liability whatsoever to employ any person who had been engaged by the previous owner and it was upto the present management to screen and select such person out of those who might have been previously working in the establishment and

who had not crossed the age of superannuation. It is said that the management screened the workers, determined their physical fitness and took them in the workshop afresh.

It has been said that the management took up for consideration the case of the concerned workman also and he was asked to appear before the Medical Board which he declined to do. He was never employed by this management and he cannot claim any benefit of NCWA. In view of the above, further it is said that the management has no obligation to entertain any claim of the concerned workman.

In its parawise comments upon the statements made in the written statement of the workman also the managemernt has denied or controverted several averments or allegations and reiterated its stand already taken in its written statement.

In the rejoinder filed from the side of the workman also several averments made or the stand taken in the written statement of the management were challenged or controverted and it was asserted that the workshop was nationalised alongwith other non-coking coal mines and the same was only taken into possession by M/s. E.C. Ltd. in the year 1986. Further it was said that it is absoutely false to allege that the present management has no liability whatsoever to employ persons who had been engaged by the previous owner and it has been asserted that the management has got no legal right to deny employment to the concerned workman on the alleged ground of no-appearance before the alleged Medical Board.

4. It is obvious from the respective stands taken on behalf of the parties that the relevant issues which require consideration for coming to a conclusive findings are—whether the concerned workshop was taken over and nationalised as per Coal Mines (Nationalisation) Act, 1973 and was being handed over to M/s. E.C. Ltd., (present management) in the year 1986 or not and whether after taking over and coming into possession of the said workshop by M/s. E.C. Ltd. there existed any relationship of employer and employee between the concerned workman and the management of M/s. E.C. Ltd. or not, on the basis of which the concerned workman could claim his reinstatement in the services of the management and further as to how far the demand of the concerned workman for his reinstatement is justified.

7. In course of the argument it has been strenuously contended on behalf of the management that the concerned workshop in terms of Coal Mines (Nationalisation) Act, 1973 was never nationalised or taken over as the same was just a factory or workshop and did not fall within the definition of mines under the Mines Act and so as per the submission no question arises of any liability arisen out of the provision of Nationalisation Act as far as the said workshop is concerned. The counsel appearing on behalf of the management however, did not advance his submission and failed to impress upon the Tribunal as to how the said workshop came into the possession of M/s. E.C. Ltd., or was handed over to it in the year 1986, if the aforesaid submission made by him is to be taken into consideration or believed.

As seen above the case of the management is that Badjna Colliery and the present workshop both belonged to the same owner, Oriental Coal Co. Ltd., but the said workshop was not exclusively catering to the need of Badjna Colliery. Further its stand is that the said Badjna Colliery was taken over by the Government and was nationalised under the Coal Mines (Nationalisation) Act, 1973 w.e.f. 1-5-73. Though in the written statement it has not been specifically mentioned that the concerned workshop was also taken over and nationalised alongwith said Badjna Colliery but the contents of para 6 of the written statement made the said position clear. It is mentioned therein that at the time of take over after promulgation of presidential order, the previous owner refused to hand over the Barakar Engineering & Foundry Works to the Central Government Custodian on the ground that the said establishment was a factory and not a mine and that it was not a part of Badjna Colliery and further the previous owners contended that the said establishment was not exclusively catering to the need of Badjna Colliery and was executing a large number of jobs to the outside parties. It is also evident from the contents of the said para that by taking the aforesaid ground the previous owner filed writ petition before Hon'ble Calcutta High Court challenging the take over of the said establishment, subsequent to which pending the final disposal of that case the Hon'ble Court appointed the previous owner to function as Receiver. Thereafter in para 7 it is mentioned that while the said establishment was under the receivership of the previous owner, a lock out was declared by them w.e.f. 28-1-80 and it so remained under lock out till 13-11-86. In para 8 it stands mentioned that the Hon'ble Supreme Court held that the Coal Mines (Nationalisation) Act, 1973 was constitutionally valid but no specific verdict that the workshop should be handed over to Coal India Ltd./E.C. Ltd., could be passed. This averment was however not justified by the management by producing the copy of the judgment of Hon'ble Supreme Court and during the course of the argument it was asserted from the side of the workman in that regard that the Hon'ble Supreme Court turned down all the grounds taken and relief sought for by the erstwhile owner and held the take over and nationalisation of the concerned workshop as valid. From the evasive and a peculiar nature of the statement as made in the same para itself as also in para 10 of the written statement it is apparent that the said workshop was handed over to M/s. E.C. Ltd., only when the previous owner lost the case before the Hon'ble Court. It stands mentioned that

previous owner of their own decided to hand over the said workshop to M/s. E.C. Ltd., after the Hon'ble Supreme Court's verdict and they did so for the reasons that the workshop had become a junk and was a liability to the previous owner. Nothing has been put forward on behalf of the management to show that in the year 1986 when the workshop was handed over to M/s. ECL the same was found to be a junk. In para 10 of the written statement the date of the hand over of the workshop to M/s. ECL has been given as 14-11-86 but it is again mentioned that the previous owner handed over the workshop to ECL on their own. Precisely, it is evident from the aforesaid statements made in the written statement itself that the concerned workshop was also taken over and nationalised as per Coal Mines (Nationalisation) Act, 1973 but thereafter the erstwhile owner challenged the take over of the workshop on several grounds before the Hon'ble High Court during pendency of which the said workshop remained under a Receiver and then there was a lock out between 1980 to November, 1986 and then later finally Hon'ble Supreme Court's verdict came holding the take over of nationalisation of the concerned workshop as valid, subsequent to which on 14-11-86 the previous owner handed over the workshop to M/s. ECL management though the plea is that the previous owner on their own decided to hand over the said workshop after Hon'ble Supreme Court's verdict.

8. Out of the two witnesses examined on behalf of the management, MW-1 is a person as per whose statement he joined the company in the year 1992 as Executive Engineer. He has said that Barakar Engineering & Foundry Works was taken over by ECL in the year 1986 and the same, according to him, is a workshop and does not come within the mine. He has said that earlier both the workshop and Badjna colliery belonged to M/s. Oriental Coal Company and thereafter, according to him, Badjna Colliery was taken over by the Custodian, Central Government and subsequently it was taken over by M/s. ECL by virtue of nationalisation. He has also stated about the case being filed before the Hon'ble Calcutta High Court. During his examination-in-chief he has not said that the workshop was not taken over along with the said colliery by virtue of nationalisation in the year 1973. However, during his cross-examination initially he stated that it is not a fact that the workshop vested in M/s. ECL by virtue of nationalisation of Non-coking Coal Mines (Nationalisation) Act, 1973 but immediatly thereafter he stated that he is not aware if the workshop was taken over by M/s. ECL on the strength of nationalisation of Coal Mines Act, 1973. He has thereafter stated that he cannot refuse that the factory was not taken over by virtue of nationalisation of coal industry in the year 1973. Subsequent to this he has said that it may be a mine under the definition given in Sec. 2(j) of the Mines Act. Then upon the question being asked he has said that in the said workshop they produce and repair all machineries for all subsidiaries of C.C. Ltd. He has also said that he can file papers to show how ECL became owner of this workshop. It is clear from the evidence of this witness that he has made it clear during his cross-examination that he was not aware of the fact if the workshop was taken over by ECL on the strength of nationalisation of Coal Mines Act in the year 1973 and has also stated that he cannot refuse the said fact. He has accepted that it may be a mine under the definition given in Sec. 2(j) of the Mines Act. Though he has said that he can file paper to show how the ECL became owner of this workshop but no paper has been filed nor he has said in his evidence that if not through nationalisation and take over then, in fact, by what other mode and due to what reason and how the ECL came in possession of the said workshop or the same was handed over to M/s. ECL in the year 1986. As noticed above, even in the written statement of the management there is no statement to the said effect. In short, the aforesaid witness cannot be taken to have supported the case of the management upon the aforesaid aspect, rather his statements to some extent go in favour of the workman.

The next witness of the management MW-2 has also stated that the previous owner of Badjna Colliery and Barakar Engineering & Foundry Works was the same and has also said that the ECL had acquired the said workshop in the month of November, 1986. Earlier he did not make any statement in that regard but during his cross examination he has said that it is not a fact that Barakar Engineering & Foundry Works was taken over alongwith Badjna Colliery but thereafter he has said that he does not know under which provision of law the said workshop was taken over by M/s. ECL, and further he was not knowing whether all the collieries and workshops of ECL were earlier nationalised as per Nationalisation Act or through any private agreement. Interestingly at a later stage, in course of his cross-examination he has tried to explain as to on what basis the said workshop was acquired by ECL. He says that neither through any private arrangement nor through purchase, rather the same was acquired in the year 1986 as per the direction of the Hon'ble Supreme Court. This is not even the case of the management, rather its case is that the previous owner on their own decided to hand over the workshop to M/s. E.C.L. and not on the basis of any verdict of Hon'ble Supreme Court and is not mentioned that if not on the basis of take over and nationalisation and subsequent decision of Hon'ble Supreme Court. Then on what basis and why merely on the independent decision of the previous owner the said workshop came into possession of the management of M/s. E.C. Ltd. It is needless and to make discussion once again upon the stand taken on behalf of the management in its written statement, in view of the discussions already made above. The aforesaid witness (MW-2) in view of the

nature of statement made by him does not appear to have corroborated the case of the management upon the aforesaid aspect, rather in his enthusiasm to support the case of the management he has gone to the extent of making some statements which go beyond the pleading of the management. Anyway, if he has said that on the basis of Hon'ble Supreme Court Judgement the ECL came into possession of the said workshop then he can be taken to have made the correct statement as it has been already observed earlier on the basis of averment made in the written statement of the management that the taken over and nationalisation of the workshop was challenged and then only upon the verdict of Hon'ble Supreme Court the said workshop was handed over to M/s. E.C. Ltd. in the year 1986.

Apart from the above, definition of mine as contained in Sec. 2(j) of the Mines Act, quite apparently appears to be exhaustive and cannot be narrowly construed. It does not mean only the place where any operation for the purpose of searching for or obtaining mineral has been or is being carried on rather the same includes several other places, workings and functions also, such as, all the workshops and stores situated within the precinct of the mine under the same management and used primarily for the purpose connected with that mine or number of mines under the same management. From the written statement of the management itself it is clear that the said workshop is catering to the need of Badjna colliery even though not exclusively. The management's witness (MW-1) has clearly stated that the concerned workshop may be mine under the definition under Sec. 2(j) of the Mines Act. He has clearly stated that in the said workshop all machineries for all subsidiaries of C.I.L. are produced and repaired. Thus, the location and the nature of functions of the concerned workshop clearly brings it within the definition of mine as provided under the Act and there does not seem to be any scope of taking any otherwise view.

Thus, in view of all the aforesaid the irresistible conclusion which can be arrived at is that the concerned workshop and Badjna colliery which were adjacent to each other and were under the same management were taken over and nationalised in the year 1973 itself later as the litigation was raised the same could be handed over to the management of E.C. Ltd. only on 14-11-86 after the Hon'ble Supreme Court's verdict. Therefore, the plea of the management that the concerned workshop was never taken over and nationalised as per the Nationalisation Act, 1973 is completely devoid of merit.

9. The contention of the managment is that never there was any relationship of employer and employee between the concerned workman and the management of ECL and so there is no question of offering any employment or reinstatement of the concerned workman in the service of the management. Upon this aspect, on the other hand, the contention of the workman (WW-1) is that he was working in the concerned workshop from the year 1970 as moulder. Initially, according to him the said workshop was under private management which was taken over by ECL on nationalisation of Non-Coking Coal Mines. In his evidence he has also said that the said workshop was in running condition and was closed from the year 1980 but again started functioning from the year 1987. Further according to him when it started functioning in the year 1987 he reported for duty but the management did not allow him and was asked that in his place he should make request for employment of his son. According to him, he took step but nothing was done and when the management declined to make employment, he wanted his reinstatement in the service by raising the industrial dispute. The management's witnesses though were not in the service of the management during the relevant period but have said in their evidence that the concerned workman never worked under the management. Even as per the own statement of the workman after take over by ECL when the said workshop started fuctioning in the year 1987 he reported for duty as he had been in the services of the management earlier, but he was not allowed to resume his duty and instead of that asked him to make request for his dependent's employment in his place.

In view of the aforesaid stand being taken firstly it has to be seen whether the concerned workman was under the employment of the erstwhile owner of the said workshop or not and being under the employment whether he worked till the take over and nationalisation of the said workshop or not.

In the entire written statement of the management it has not been denied anywhere that the concerned workman had not been working under the erstwhile management of the workshop prior to its take over. Simply its stand is that there was no relationship of employer and employee between the concerned workman and the present management. Further in the written statement it has been clearly mentioned that ECL did not agree to take over any of the liability of the previous owner. MW-1 in course of his evidence has also corroborated it by saying that liability of the previous owner was not accepted by ECL. In course of his cross-examination upon question being asked this witness has said that they can file document to show that ECL had not accepted the liability of erstwhile owner. Significantly despite such stand being taken no any material was put forward from the side of the management to show that there was any such agreement or understanding with respect to the liability. Interestingly the management's witness (MW-2) during his corss-examination has said very clearly and categorically that all the employees who were on the roll of the company on the date of taking over of the concerned workshop were entitled to be taken in the employment of ECL. This statement not only corroborates

the stand of the workman rather it is in conformity with the relevant provision of Nationalisation Act also. Besides the clear order passed under the law the Hon'ble Supreme Court also in its decision reported in 2001 (89) F.L.R. 552 while interpreting the provision of Coking Coal Mines (Nationalisation) Act has held that where there is transfer of business from one owner to another, the rights and obligations which existed between the old management and their workers continue to exist vis-a-vis the new management after the date of transfer provided there is continuity of service and identity of business and it further observed that for the purpose of continuity of service Section 17 makes the necessary provisions. Further the Hon'ble Court observed that a person on such transfer becomes the owner of the concern and the employer of the employees of the establishment.

The aforesaid witness however has denied the suggestion that at the time of nationalisation the concerned workman was working in the workshop but this denial does not appear to be of much significan as according the own statement of this witness he worked in the said workshop only from the year 1987 and in his cross-examination particularly he has accepted that prior to 1987 he has no knowledge of working of said workshop.

In the aforesaid context it is reiterated that though the management has denied the working of the concerned workman in the said workshop after its handing over the year 1986 but there is no denial on its part to the effect that the concerned workman was never on the roll of erstwhile management and never worked till the take over and nationalisation of the said workshop. Further, it is pertinent to point out that in para 11 of the written statement it is mentioned that the management screened the work and determined their physical fitness also before providing employment to them and the management took up for consideration the case of the concerned workman also and he was asked to appear before the Medical Board which he declined to do. Further it was mentioned that the concemed workman was never employed by this management and he cannot claim any benefit of NCWA and further in view of the above the management has no obligation to entertain any claim of the concemed workman. It can well be gathered out of such statements that the case of the concerned workman must have been taken up for consideration only upon finding him to be under the employment of the erstwhile owner earlier otherwise there does not seem to be any reason as to why the management would have agreed for screening and medical examination of a worker if he would not have been working in the said workshop prior to its take over. Besides the aforesaid statement made in the written statement it would also be pertinent to look into those two documents filed and exhibited on behalf of the management Ext. M-1 is the letter dated 9-3-98 sent by the concerned workman to the General Manager of the concerned workshop. The workman mentioned therein that he was a permanent employee of Barakar Engineering and Foundry Works and his Identity Card Number was 42-46141 and on the date of closure of the factory in January, 1980 he worked. He further stated therein that after the opening of the factory he went to resume his duty but the Senior Personnel Officer ordered him for medical check up, but since then he has been pursuing for medical check up before the Sr. Personnel Officer which has not been made so far. He further disclosed therein that he was suffering from leprosy and so requested that after declaring him unfit by the competent Medical Board his son be provided the employment under Para 9 : 4 : 3 of NCWA-III. This application of the workman was regretted by letter dated 11-3-88 sent to the concerned workman by General Manager of the said workshop (Ext. M-2/1). It was mentioned that the concerned workman had not turned up before the Screening Committee for consideration of his case for employment on due date and further it was mentioned that it is evident from the said letter of the applicant itself that he was suffering from leprosy. Lastly it was mentioned that as the concerned workman was not fit for duty his application is regretted. Ext. M-2 another letter dated 22-2-91 sent to the concerned workman by P.K. Ghosh, Superintending Engineering whereby the concerned workman was informed that the competent authority has regretted his case. Before proceeding to make discussion on the documents of the management it would be proper to look into those two documents also filed and exhibited on behalf of the workman. Ext. W-1 is a letter dated 22-6-90 sent by the concerned workman to the G.M. (I.R.), ECL, Headquarter wherein also the workman stated that he worked at Barakar Engineering and Foundry Works till the closure of the said factory, but when it was opened he was not called for screening and medical check up. He further stated therein that he came to know from some of the co-workers that his name was on the Notice Board for his screening. But he was not informed by the management despite the fact that he was residing in a village which was 10 K.M. away from the said factory. It is further mentioned that on verification from the factory office it is learnt that on 25-5-97 the date of medical examination was fixed but no intimation was issued from the side of the management. He lastly requested for forwarding of the whole facts to the G.M. for sympathetic consideration of his case. Ext. W-2 is a letter dated 3-7-90 addressed to the Dy. General Manager (IR), ECL, Headquarter, Sanctoria which was sent to the said authority by enclosing the application of the concerned workman. It stands mentioned that no separate letter was issued to the concerned workman at the time of take over and jointly the notice for medical examination was being displayed in the notice Board for appearance of the workers before the Medical Board. Upon displaying of such notice it is mentioned that five workers appeared before the Medical Board except Pagal Gorai, the concerned workman. Lastly, it is said that the authority

recommended or made request for sympathetic consideration of the case of the concerned workman.

From the contents of the aforesaid documents it is more than obvious that the management treated the concerned workman to be a workman who worked under the erstwhile management prior to take over and that is why like others his case was also taken up for consideration and by way of display of notice on the Notice Board he was asked to appear for his screening test or for medical examination before the Medical Board. By way of such initiative being taken from its side the management admitted the status of the concerned workman that existed prior to the take over of the workshop. The management cannot shrug off its responsibility and liability which accrued out of take over and nationalisation of the said workshop merely by taking the plea that the concerned workman was never worked under the management and so cannot be taken to be its employee. No any provision of law has been cited to show that after take over and nationalisation the wrokman who was working under the previous management can be taken under the new management only upon screening being done by a duly constituted Screening Committee. Further it has not been disclosed as to when the Screening Committee was formed and what was its constitution. Even if there is no such requirement under the law it was open for the management to medically examine the workers for its own satisfaction and in order to ensure that those workmen who were working from before are in sound state of health for smooth discharge of their work. But for that also the method which was adopted was not proper. As seen above, one authority of the management has accepted that the notice was simply displayed on the Notice Board asking the concerned workman and others to appear before the Screening Committee for medical examination and no any notice or information was sent individually. It is an admitted fact that from the year 1980 to 1986 the said workshop was closed as there was a lockout. Further it has not been disputed that the concerned workman lived in a village which was at a distant place from the said workshop. Taking into account such circumstance it would have been just and appropriate to send a notice individually to the concerned workman on his home address. As it appears, immediately after having come to know about the notice being displayed on the Notice Board and the Screening or medical examination done the concerned workman approached the management and made request for sympathetic consideration of his case for referring him to Medical Board. He also initially disclosed in his application that he was suffering from leprosy and so after declaring him medically unfit his dependent son should be provided employment in his place. This application of the workman however was regretted by sending him a letter as contained in Ext. M-2/1. As it is apparent from the same merely upon the fact that the concerned workman himself disclosed that he was suffering from leprosy, he was found to be not fit for duty and so merely on that basis his application was regretted. Certainly it was a strange and most unreasonable way of rejecting the aforesaid application of the workman. The management's own witness has accepted during his evidence that now-a-days leprosy is curable disease. Before rejection of the application of the concerned workman it would have been proper to ask the concerned workman to appear before the Medical Board in order to find whether he was medically fit for the job or not and in case he would not have been found to be medically fit then in that event the management could have made the consideration for the appointment of his dependent in his place. Curiously no any such consideration was made whereas it was a appropriate case for making sympathetic consideration. Subsequent to the said development it appears that by letter dated 3-7-90 (Ext. W-2) one senior authority of the management recommended the case of the concerned workman and requested the Dy. General Manager for sympathetic consideration of the case of the workman but even then as it is apparent from letter dated 21-2-91 (Ext. M-2) the competent authority regretted the case of the workman. In short, the whole process and the attitude adopted by the management was unjust, unreasonable and improper.

Thus, in view of all the aforesaid consideration not only it can be concluded that even after take over and nationalisation of the said workshop there existed relationship of employer and employee between the concerned workman and the present management, rather there does not appear to be any difficulty in concluding this also that even if the management had intended for his screening or for medical examination of the workman after the take over then it ought to have dealt with the case of the concerned workman in a just and proper manner and it would have been in the fitness of thing if the workman would have been referred to a Medical Board before rejection of his case outright.

10. Thus, in view of the findings arrived at as above it is finally concluded that the concerned workman has a valid claim for his reinstatement/employment under the management but of course subject to having been found medically fit and below the age of superannuation. As admittedly he never worked under the present management after handing over of the said workshop in the year 1986 and further as nothing has been brought on record to show that the concerned workman remained idle althrough and was not gainfully employed anywhere, the concerned workman would not be required to be paid the back wages.

11. The award is, thus, made as hereunder :

The demand of the Union for reinstatement/ employment of the concerned workman, Pagal Gorai by the management of Barakar Engineering & Foundary Works of M/s. E.C. Ltd. is justified and the concerned workman

deserves reinstatement in the service of the management but of course without back wages and subject to being found medically fit and below 60 years of age which is the age of superannuation under the management.

Consequently the management is hereby directed to act accordingly within 30 days from the date of publication of this award.

However, there would be no order as to cost.

S.H. KAZMI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 422.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I धनबाद के पंचाट (संदर्भ संख्या 110/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-01-2003 को प्राप्त हुआ था।

[सं. एल-20012/94/91-आई०आर० (सी. I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 422.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 110/91) of the Central Government Industrial Tribunal-I Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of BCCL and their workman, which was received by the Central Government on 06-01-2003.

[No. L-20012/94/91-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT DHANBAD

In the matter of a reference under Sec. 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 110 of 1991

Parties : Employers in relation to the management of D-Ropeways of M/s. B.C.C. Ltd.,

AND

Their Workmen.

Present : Shri S. H. Kazmi, Presiding Officer.

Appearances :

For the Employers : Shri S. C. Mallick, Advocate &
Shri D.K. Choubey, Advocate.

For the Workman : Shri D.Mukherjee, Secretary, Bihar Colliery Kamgar Union.

State : Jharkhand

Industry : Coal

Dated the 27th December, 2002

AWARD

By Order No. L-20012/94/91-IR(Coal-I) dated 24-10-1991 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

> "Whether the demand of the Union for regularisation of Shri Anil Pramanik and Shri Arun Bhattacharjee, supplying water at Station No. 10 Amtal 'D' Ropeways of M/s. BCCL as Category-I Mazdoor is justified? If so, to what relief these workman are entitled?"

2. Precisely, the case of the sponsoring union, is that both the concerned workmen, namely, Anil Pramanik and Arun Bhattacherjee have been working as water carrier/water mazdoor at 'D' Ropeways since long continuously with unblemished record of service. It has been said that the concerned workmen have been working in permanent nature of job and have put in 240 days attendance in each calendar year under the direct control and supervision of the management. It has also been said that as per Wage Board Recommendations water carrier/water mazdoors are entitled for Category-I wages. But inspite of this fact, the management have been paying wages to the concerned workmen much below the rate of Category-I of NCWAs on the alleged ground that they are suppliers. It is said that the concerned workmen and the union vehemently protested against such system of exploitation and represented before the management several time for their regularisation in Category-I with retrospective effect but no response was ever made. Ultimately, it is said, the union raised an industrial dispute before the A.L.C. (C), Dhanbad but the same ended in failure due to adamant attitude of the management and the dispute was referred to this Tribunal by the Government of India for adjudication. Further, it has been said that the action of the management in not regularising the concerned workmen as Category-I Mazdoor is not only vindictive in nature but is also against the settled law of the land and against the provisions of Wage Board Recommendations and NCWAs.

3. The management's case, on the other hand, is that the concerned workmen were never employed by the management and their names did not appear in the registers

of the management at any point of time. It has been said that at no point of time there existed any relationship of employer and employee between the persons concerned and this management. It has also been said that the management had residential colony called Amtal colony in which employees of the Ropeways Division used to reside and the said colony does not fall within the scope of the definition of Mine within the meaning of Sec. 2(J) of the Mines Act. It is said that the management made arrangements for supply of water for drinking purposes to the residents of the said Amtal colony and the actual arrangement made with the persons required to supply water as per the above system was that they were being paid 0.50 paise per Bhar/Tin of water to the residents of the colony. They were suppliers of water and payment was made to them according to numbers of Bhar supplied. Further, it has been said that the arrangement for supply of water did not last for more than 2 hours or so per day and the persons concerned also used to supply the water to many other parties including hotel, shops etc. and they did not at any point of time supply water at Station No. 10 'D' Ropeways of M/s. BCCL. It has also been said that the management have absolutely no control over the work or other function of the supply of water and as per the above arrangement the persons concerned were contractors for supply of water. They submitted bills to the management and payment was made to them by the management against the bill. It is said that the arrangement was also not permanent and it was discontinued when the colony was closed about one year ago. Further it has been said that the question of regularisation of the concerned persons does not and cannot arise and those persons are not at all entitled to any relief whatsoever.

In its rejoinder also the management has denied several statements or averments made in the written statement of the workmen and reiterated its stand that there was no relationship of employer and employee between the concerned persons and the management and so the question does not arise of their regularisation by the management.

4. In the rejoinder filed on behalf of the workmen also several statements made by the management in its written statement have either been denied or controverted and it was again asserted that for all practical purposes the concerned workmen had always been the employees of the management and it is unjust on the part of the management to deny them their regularisation in Category-I job.

5. In view of the aforesaid stands taken on behalf of the respective parties it is apparent that the main issue that requires consideration is as to whether at all there was any relationship of employer and employee between the concerned workmen and the management or not and also whether having worked for a consideration long period as water carrier the concerned workmen deserve to be regularised as Category-I workmen in the services of the management.

6. Both the sides have led their oral as well as documentary evidence in support of their respective stands and those would be looked into and considered in course of discussions made hereinafter.

7. As seen above, definite stand of the concerned workmen is that they have been working in permanent and continuous nature of job and have put in 240 days attendance in each calendar year. Their jobs are being supervised by the management and they are also being paid by the management for the works being done by them. But neither they were paid wages as per Wage Board Recommendations nor they were regularised by the management in Category-I despite several representations. Further, their contention is that though from the year 1991 the management has stopped paying them their wages but still they are working as water carrier.

The firm stand of the management, on the other hand, is that there has never been any relationship of employer and employee between the concerned persons and the management and they were simply supplier of water or the contractor for supply of water, who submitted bills to the management and were being paid by the management at the rate of 0.50 paise per Bhar of water. Further, its stand is that the engagement of the concerned persons was not permanent and the same was discontinued when the colony was closed sometime in the year 1991. As there was no relationship of employer and employee and the management had never any control or supervision of their work, according to the management, no question arises of regularising the concerned workmen in Category-I job or extending any relief to them whatsoever.

8. In the written statement of the workmen it has not been disclosed as to when the concerned workmen were appointed or since when they have been working as water carriers and simply the statement has been made that they have already put in attendance of more than 240 days in one calendar year. Only in course of evidence, WW-1 who is one of the concerned workmen has said that he and another workman were working since 1978. Interestingly, in the written statement of the management also though the concerned workmen have been recognised as water supplier or contractors who supplied water in its colony but no statement has been made to the effect as to for how long they worked as such or since when they have been supplying the water and were being paid by the management. It is only during evidence the sole witness examined on behalf of the management in course of his cross-examination has said that the workmen were supplying water since 1987. Exts. W-1 to W-2/2 are the six registers of bills filed on behalf of the workmen and they relate to the period between 1983 to 1991 and it has been asserted from the side of the workmen that even prior to

1983 also they worked as water suppliers and so there is nothing to corroborate the aforesaid statement of WW-1 that they have been working since 1978. The pay orders and the bills which have been marked as Ext. M-2 to M-2/44 and M-3 to M-3/36 are also for the period between 1989 to March, 1991. Ext. M-1 is the statement showing the details of bills submitted by the concerned workmen and that also shows that those details of bills and vouchers are for the period between April, 1989 to March, 1991. So, the aforesaid statement of the management's witness that the concerned workmen were working since 1987 also finds no corroboration from the material produced by the management and it has not been asserted on his behalf that earlier to 1987 also the concerned workmen worked or not. As such neither there is any material to show that the concerned workmen worked since 1978 nor there any material to show that they worked since the year 1987. But as per those materials this much becomes clear that they worked upto February or March, 1991. It is yet another fact that as per the workmen they worked even thereafter though their payments were stopped from February, 1991 and according to the management their engagement was discontinued as the colony was closed in the 1991. Even if we confine ourselves to the materials produced on behalf of both the sides, as noticed above, it becomes more than obvious that whether as a supplier of water, as per the case of the management or as water carriers as per the stand of the workmen, the concerned workmen worked continuously for years together and certainly for more than 240 days in one calendar year.

The aspect of working of 240 days in one calendar year has not been strenuously challenged by the management and in course of argument it has been submitted on its behalf that it is immaterial whether the concerned workmen worked for 240 days or not because there was no relationship of employer and employee at all and the management never had anything to do or never had any control over their working and they simply being the suppliers of water in the management's colony were receiving the wages on piece-rated basis i.e. 0.50 paise per Bhar whereas the workman's contention is that they were being engaged by the management and they worked under the management and their works were also supervised by the management and in that way they put in attendance of more than 240 days in one calendar year.

Both the concerned workmen in course of their evidence appear to have made few statements which do not find corroborated even from the materials produced by them. Both of them in their evidence consistently stated that they were appointed on daily wage of Rs. 1/- a day which was increased to Rs. 5/- per day and then to Rs. 7.50 per day and then the same was increased to Rs. 10/- per day. They have also said that since the year 1985-86 they were being paid daily wage at the rate of Rs. 15/- per day. These statements do not find support from those six bill registers produced by the workmen. It is clearly mentioned therein that the bills were prepared and the amount to be paid to them was calculated at the rate of 0.50 paise per Bhar. There is nothing mentioned therein out of which it can be gathered that the workmen were paid on daily wage basis either at the rate of Rs. 5/- or Rs. 15/- per day. From the pay orders etc. produced from the side of the management also it is evident that the payment were made as per the bills submitted showing the amount at the rate of 0.50 paise per Bhar. In course of evidence also the management's witness has stated about the said fact or the said mode of payment. The concerned workmen have also made the statements that they never submitted the bills to the management for payment and the management obtained their signatures on the wage bills. This statement is also contrary to the materials produced by them. Had they not been submitting the bills they would not have maintained those bill registers. Those documents are not of the management, rather have been produced from the side of the workmen. It is also to be noticed that both of them have said in their evidence that one Mr. Banerjee, Foreman had appointed to do the said work and they have not disclosed whether appointment letters were also issued or in what way they were appointed. Nothing has been brought on record to substantiate the said fact and moreover there is no such stand taken in the written statement. Despite all such inconsistent statement of the workmen the fact remains that as per the documents of the workmen they worked as water carriers continuously since 1983 to 1991 and even as per the documents of the management they worked continuously from April, 1989 to March, 1991 though its witness has made the statement that the concerned workmen worked since 1987. Therefore, it is apparent that admittedly the concerned workmen have worked for more than 240 days in one calender year even if it is taken for the moment that their engagements were discontinued and they never worked after February or March, 1991. It is also evident that for the works being done by them, the concerned workmen were being paid by the management and they were paid at the rate of 0.50 paise per Bhar and payment used to be made to them through pay orders upon the bills submitted by them. The management's stand is that each day the concerned workmen worked only for about two hours and never performed the work for the whole day. The management's witness himself has accepted in course of his evidence that the concerned workmen were supplying water to the staff and officers working in three shifts and also in the quarters. According to him, shift starts from 7 AM to 3 PM, next 3 PM to 11 PM and the third shift from 11 PM to morning. So, this witness has himself contradicted the aforesaid stand of the management. From his statement one more thing becomes clear that the concerned workmen were not only supplying the water in the residential quarters rather at the sub-station also and this also contradicts the stand of the management as taken in its written statement

that the concerned workmen supplied water in the residential colony only and not at the 'D' Ropeways.

Precisely, in view of all the above, it stands established that the concerned workmen had been supplying the water at the concerned station and residential quarters of the management for years together regularly and continuously and in that process they had already put in attendence of more than 240 days in one calendar year.

So far as the control and supervision of the management over the workings of the concerned workmen are concerned it goes without saying that the same may be direct or indirect and only the job requiring special skill or technical or sensitive jobs require constant and intensive control and supervision but the job of some common nature, such as, the job of supply of water does not require some nature or type of supervision or control. Usually in such case control and supervision are exercised by taking care of the performance of a particular workman by the management. In the instant case from the documents of the management it is apparent that the concerned workmen were being paid only upon being satisfied that they have been continuously performing their jobs.

9. Sec. 19 of the Mines Act envisages obligation on the part of the management for making effective arrangement to provide for and maintain sufficient supply of cool and wholesome drinking water at suitable points conveniently situated for all persons employe in a mine. Evidently the management has got statutory obiligation to maintain water supply in a mine. As per Sec. 2(j) the Ropeways is also a mine and so the aforesaid provisions of the Mines Act are very much applicable in the present case also which relates to 'D' Ropeways Station and the residential quarters of workmen of the said station. It has not been denied under the Wage Board Recommendations also it is obligatory on the part of the management to provide water supply to the staff quarters where public water supply system is not available. Had such obiligation been not there on the part of the management, the management certainly could not have taken trouble of engaging any one for the supply of water in the residential quarters of the employees as well and would not have agreed to pay the wages to the persons engaged in such job.

It becomes clear that the concerned workmen were engaged for a long time in doing the job of permanent nature and they were rendering services to the management for the benefit of the management and so in view of all the facts and circumstances borne out of the materials on record, there does not appear to be any difficulty in concluding that the relationship of employer and employee was certainly there between the concerned workmen and the management and the management after taking the work of the aforesaid nature from the concerned workmen for years together cannot get away simply by asserting that they were, in fact, suppliers or contractors and not the workmen of the management.

It has already been held by the Hon'ble Supreme Court in a decision reported in 1994 L.L.R. 634 (R.K. Panda & others Vs. Steel Authority of India and others) that initially there may not be direct relationship of employer and employee between the management and a particular workman but in course of time this relationship may develop and so it has to be seen at what point of time a direct link is established between the contract labour and principal employer, eliminating the contractor from the scene and this can be established through materials produced before the Court. In the instant case assuming it for the moment that initially the concerned workmen worked as suppliers of water, but due to their continuous working in a job of permanent nature which they have been performing for the benefit of the management, the relationship of employer and employee developed and so on that basis the concerned workmen deserve consideration for their regularisation.

10. In the written statement of the management as also in the statement of the witness of the management it has come that the concerned sub-station was closed in June, 1990. As per the written statement it was closed sometime in the year 1991 and as per evidence of the management's witness the sub-station was closed in the month of June, 1990 and thereafter the colony was also vacated. There is not only contradiction between the statement of the witness and the statement made in that regard in the written statement, rather from the documents filed on behalf of the management also it is evident that the last bill and pay order is for the month of March, 1991 and so it is not in consonance with the aforesaid statement of the management's witness. Nothing has been brought on record by the management to show that the said sub-station is closed or the colony has already been vacated. The concerned workmen have seriously challenged the aforesaid stand. Not only in their rejoinder, rather in course of their evidence also they both have denied the said fact. When the management had come out with the aforesaid specific stand then it had to produce the materials in support of that, but it has failed to do so and as such it is not possible to conclude that the said sub-station or Ropeways is no more in operation or the colony which was meant for the employees of the said sub-station is vacated.

11. Thus, in view of all the aforesaid considerations and discussions based on the materials

on record it is finally concluded that both the concerned workmen deserve to be regularised in Category-I job. Upon their regularisation they would be entitled to be paid their wages as per NCWAs or the same wages or allowances which are being admissible to a permanent workman working on the same nature of job.

12. The award is, thus, made hereunder :

The demand of the union for regularisation of the concerned workmen, Anil Pramanik and Arun Bhattacherjee as suppliers of water at Station No.10, Amtal 'D' Ropeways of M/s. BCCL as Category-I Mazdoor is justified and they deserve to be regularised on the job of said category. Pursuant to their regularisation they would be entitled for Category-I wages. Consequently the management is hereby directed to regularise the concerned workmen in Category-I job within 30 days from the date of publication of this award.

In the circumstances of this case, however, there would be no order as to cost.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 423.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I, धनबाद के पंचाट (संदर्भ संख्या 1/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-01-2003 को प्राप्त हुआ था।

[सं. एल-20012/82/99-आई. आर. (सी. I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S. O. 423.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2000) of the Central Government Industrial Tribunal I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of BCCL and their workman, which was received by the Central Government on 06-01-2003.

[No. L-20012/82/99-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Sec. 10(1)(d)/(2A) of the Industrial Disputes Act, 1947

Reference No. 1 of 2000

PARTIES : Employers in relation to the management of C.V. Area of Ms. B.C.C.Ltd.

AND

Their Workmen.

PRESENT : Shri S. H. Kazmi, Presiding Officer.

APPEARANCES :

For the Employers : Shri B. M. Prasad, Advocate

For the Workman : None.

State : West Bengal. Industry : Coal

Dated: the 26th December, 2002

AWARD

By Order No. L-20012/82/99-IR(C.I) dated 24-08-1999 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-sec. (1) and Sub-sec. (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

> "Whether the demand of the Union that Sri Kuldip Singh, Senior Mechanic (Excavation) in Group A, NLOC/KCOCP, be promoted to supervisory category on the consideration that junior workmen have been promoted in other areas is legal and justified? If yes, to what relief the concerned workman is entitled and from which date?"

2. It appears that after 17-9-2001 itself none is taking any step on behalf of the workman and this case is still pending for adducing evidence by the management. Several adjournments were also granted with the hope and expectation that the workman or sponsoring union would be taking necessary step on the date fixed but no significant development could be seen even then. Quite apparently there is no dispute in existence for being adjudicated otherwise the workman would not have abandoned or left the case unattended.

Anyway, whatever may be the reason, considering the past developments it would be sheer wastage of time and would also be absolutely needless to allow this case to remain pending for any longer. As such, this reference case stands finally disposed of.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 424.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध धनबाद के में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I धनबाद के पंचाट (संदर्भ संख्या 42/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/1/2003 को प्राप्त हुआ था।

[सं. एल-20012/62/93-आई. आर. (सी.-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 424.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 42/94) of the Central Government Industrial Tribunal I. Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 6/1/2003.

[No. L-20012/62/93-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 42 of 1994

PARTIES:

Employers in relation to the management of Moonidih Project of M/s. BCCL.

AND

Their workmen

PRESENT:

Shri **S. H. Kazmi**, Presiding Officer

APPEARANCES:

For the Empolyers : Shri R. N. Ganguly, Advocate

For the Workman : None

STATE : Jharkhand INDUSTRY : Coal

Dated, the 23rd December, 2002

AWARD

By Order No. L-20012/62/93-I.R. (Coal-I) dated 8-3-1994 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Moonidih Project of M/s. Bharat Coking Coal Ltd., P.O. Moonidih, Distt. Dhanbad in denying the allotment of quarter to Shri Direndra Sharma is justified when the workers juniors to him have been given quarters. If not, to what relief the workman is entitled ?"

2. It appears from the record that from the year 1994 itself none is appearing on behalf of the workman or the sponsoring union and at no point of time any step whatsoever has been taken. Only adjournment after adjournment was granted in anticipation of appearance on behalf of the workman for the purpose of taking necessary step, but the position till date remains the same. The present reference simply relates to the dispute regarding the allotment of quarter and so might be due to such petty nature of dispute the workman has lost interest in this case and does not want to pursue the same. Quite apparently there is no dispute in existence otherwise the workman or the sponsoring union would not have abandoned this case in such a manner.

In view of prevailing circumstances it is needless to keep this case pending for any longer and as such this reference case stands finally disposed of.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 425.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II धनबाद के पंचाट (संदर्भ संख्या 61/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3/1/2003 को प्राप्त हुआ था।

[सं. एल-20012/29/97-आई आर (सी.-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 425.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 61/98) of the Central Government Industrial Tribunal II. Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 3/1/2003.

[No. L-20012/29/97-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 61 of 1998

PARTIES:

Employers in relation to the management of Lodna Area No. X M/s. Bharat Coking Coal Ltd., Distt. Dhanbad and their workmen.

APPEARANCES:

On behalf of the workman : Shri S. C. Gaur, Advocate

On behalf of the employers : Shri D. K. Verma, Advocate

STATE : Jharkhand. INDUSTRY : Coal

Dated, the 17th December, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/29/97-I.R. (Coal-I), dated, the 12th March, 1998.

SCHEDULE

"Whether the action of the management of South Tisra Colliery of M/s. BCCL in dismissing the workman Shri Amiruh Mia from the service w.e.f. 3-4-1995 of the company is justified ? If not, to what relief the concerned workman is entitled ?"

2. The case of the concerned workman according to the W.S. submitted by the sponsoring union on behalf of the workman in brief is as follows :—

It has been submitted by the sponsoring union that the concerned workman was a permanent Dumper Operator at South Tisra Colliery of Lodna Area No. X under the management. they submitted that the management issued a charge sheet dated 13-11-1994 under certified Standing Order No. 26 to the concerned workman on the alleged ground that due to his rough and negligent driving of the dumper one Basudeo Rabidas Mining Sirdar met an accident on 28-9-1994 and ultimately succumbed to his injury. The concerned workman accordingly submitted his reply on 29-11-1998 denying the allegation made in the charge sheet dated 13-11-1994. They submitted that Basudeo Rabidas i.e. the victim was not on duty at the place but he was on duty at the dump and accordingly the concerned workman has no knowledge how Basudeo Rabidas was seriously wounded by his dumper. They disclosed that one Shri Shambhu Thakur found his dead body by the side of the road behind the shovel. They further submitted that over the alleged incident a FIR was lodged against the concerned workman. But the said case was dismissed on 21-9-95 by the Chief Judicial Magistrate as the Investigating Officer failed to submit the charge sheet. They alleged that the management conducted a perfunctory departmental enquiry through their own officer and on the basis of the report submitted by the Enquiry Officer the disciplinary authority dismissed the concerned workman from service by letter dt. 3/4-9-95 illegally, arbitrarily and violating the principle of natural justice. As a result, the concerned workman raised this industrial dispute which ultimatley resulted reference to this Tribunal for award. The sponsoring union submitted their prayer to pass Award directing the management to reinstate the concerned workman to his service with full back wages and other consequential relief.

3. Management on the contrary after filing W.S-cum rejoinder have denied all the claims and allegation which the sponsoring union asserted in their W.S filed on behalf of the concerned workman. They disclosed that the concerned workman who was a permanent Dumper Operator of South Tisra Colliery during the course of duty on 28-9-94 in 'C' shift (10 P.M to 6.30 A.M) met the accident due to his rash negligent driving of Dumper No. 730 around 4.30 A.M. in the morning resulting in the death of another workman Besudee Rabidas, Mining Sirdar of the said colliery. The management submitted that as the concerned workman committed misconduct under Order No. 26 of the certified S.O. for rash and negligent driving of Dumper No. 730 and causing death of worker a chargesheet was issued against him under the provisions of clause 26.1.2 and 26.1.27 of the Certified S.O applicable to workman vide Ref. No. BCCL/STC/94/1405 dt. 9/13-11-94. The concerned workman submitted his reply to the chargesheet but as reply given by him was not satisfactory the disciplinary authority ordered for departmental enquiry as per Office order BCCL/STC/94/1520 dt. 2-12-94 in respect of the above chargesheet. They further disclosed that the Enquiry Officer conducted the enquiry with all fairness and propriety and maintaining the principles of natural justice. In course of enquiry the concerned workman was given full opportunity to defend his case. The said concerned workman participated in the enquiry proceeding along with his co-worker at the time of that enquiry and the concerned workman did not raise any dispute against the concerned Enquiry Officer. After complating the enquiry, the E.O submitted his report holding the concerned workman guilty of the charges. The competent authority i.e the Dy/C.M..E/Agent of South Tisra Colliery after going through the enquiry proceeding and after applying his

mind agreed with the Enquiry Officer and considering the seriousness of the charges which was proved beyond reasonable doubt the Competent authority had no alternative but to dismiss the delinquent workman from his service in view of order bearing No. BCCL/STC/85/PER/515 dt. 3-4-95. They submitted that by dismissing the concerned workman from service the management did not commit any illegality. The question of violating the principle of natural justice also did not arise. Accordingly the management submitted their prayer rejecting the claim of the concerned workman.

4. The points to be decided in this reference are:—

"Whether the action of the management of South Tisra Colliery of M/s. BCCL in dismissing the workman Shri Amirun Mia from the service w.e.f. 3-4-95 of the company is justified ? If not to what relief the concerned workman is entitled?"

5. FINDINGS WITH REASONS

Before taking up final hearing on merit hearing on preliminary point was taken up to see whether domestic enquiry which was held against the concerned workman by the E.O. appointed by the disciplinary authority was fair, proper and in accordance with the principle of natural justice. In course of hearing learned advocate for the concerned workman did not raise any challenge in relation to the fairness and propriety of the domestic enquiry conducted by the E.O against the concerned workman. Accordingly no evidence was adduced on behalf of the concerned workman. The management too did not adduce any evidence as the learned Advocate for the concerned workman did not raise any objection relating to the fairness of the domestic enquiry. However, in course of hearing certain documents submitted on behalf of the concerned workman as well as of the management had been marked as Ext. W-1 to W-7 and M-1 to M-5. In view of the submission of the learned Advocate on both sides the order on preliminary point was delivered on 7-6-2002 vide order No. 21 and it was observed clearly after considering all materials on record that the enquiry conducted by the E.O against the concerned workman was, fair proper and in accordance with the principle of natural justice. Accordingly at this stage I do not find any sufficient reason to re-discuss the issue. Here the point for consideration is whether the management has been able to substantiate the charge which has been brought against the concerned workman and if the concerned workman deserved any modification of the order of dismissal in view of provision as laid down under Section 11 A of the I.D. Act, 1947. The chargesheet in course of hearing was marked as Ext. W-1. It is seen that the concerned workman was chargesheeted under clause 26.1.2 and 26.1.27 of the Certified Standing Order applicable to all the worker under the management for committing misconduct, Clause 26.1.2 and 26.1.27 speak as follows :—

"26-1-2 — Habitual Negligence or neglect of duty malingering slowing down of work of inciting others to do so."

26.1.27 — Conduct within the Mines' premises or its precincts which endanger, lift or safety of any person."

It is undisputed that the concerned workman was a Dumper Operator and posted under the management at South Tisra Colliery at Lodna Area No.10. It is the specific allegation of the management that on 28.9.94 the concerned workman in course of his duties in 'C' shift (10 P.M. to 6.30 A.M.) met an accident by his Dumper bearing No. 730 for its rash and negligent driving by him and as a result of the same one Basudeo Rabidas, Mining Sirdar of the same colliery sustained injuries to his person and succumbed to his death. As the concerned workman committed serious misconduct as per clause 26.1.2 and 26.1.27 he was accordingly chargesheeted. The concerned workman on the contrary after denying the fact submitted that the management had issued the chargesheet illegally and arbitrarily. He submitted that the concerned workman was not at all at the place of the alleged accident. He submitted that his body was found by the side of the road near the shovel and accordingly he submitted his reply denying all the charges. He submitted further that over the alleged accident the management lodged a FIR at the local P. S but the said case was dismissed by the Chief Judicial Magistrate, Dhanbad vide order No. 21.9.95 as the Investigating Officer failed to submit the final report. I have considered the certified copy of the order passed by the learned C.J.M. marked as Ext. W-5. This order shows that learned C.J.M. directed the investigating Officer to stop further investigation of the case under Section 167(5) CRPC as the Investigating Officer failed to submit report in final form in that criminal case pending against the accused person under Section 287/304 I.P.C. Therefore, the claim which has been made by the concerned workman that the case was dismissed by the learned C.J.M is not the fact and for which there is no scope to say that the concerned workman was acquitted from the case. Actually as per the provision laid down under Section 167 Clause 5 C.r. PC learned C.J.M. directed to stop further investigation of the case. As the investigation was stopped under Section 167(5 Cr.PC) there was no scope on the part of the learned C.J.M to go into the merit of the case with a view to ascertain if the accused i.e. the concerned workman actually committed any offence or not.

6. It is the contention of the management that as the reply given by the concerned workman was not satisfactory the disciplinary authority ordered for a departmental enquiry as per Office Order BCCL/STC/1520 dt. 2-12-1994 in respect of the above chargesheet. In view of the said order the E.O. started enquiry proceeding against the concerned workman and the concerned workman fully

participated in the said enquiry proceeding along with co-worker and defended his case. It is further seen that full opportunity was given to the concerned workman to defend his case. No evidence is also forthcoming before this Tribunal that the concerned workman at the time of the said enquiry proceeding raised any objection against the Enquiry Officer. The concerned workman also did not challenge and the legality and propriety of the enquiry proceeding conducted by the E.O. and this fact will get its support when in course of hearing on preliminary point learned Advocate for the concerned workman did not challenge the legality, and propriety and fairness of the enquiry done by the E.O. As such it is clear that the enquiry officer conducted the enquiry maintaining all fairness and propriety and also maintaining the principle of natural justice. The E.O. after completing the enquiry submitted his report holding the concerned workman guilty of the charges. I have considered the enquiry report marked as Ext. M-4 carefully. It is seen that the witnesses narrated how the said accident took place. It is further seen that the concerned workman cross-examined the witness at length. There is no whisper to the effect that at the relevant time of that accident the concerned workman was not driving the said Dumper in question. There was also no denial to the effect that the said dumper did not meet that accident. The report submitted by the E.O. appears to be exhaustive. Considering all aspects it is clear that the concerned workman was on 'C' shift duty on 28-9-94 and he was operating the Dumper in question. Considering the evidence of the witness and also the report I find that due to rash and negligent driving of the concerned workman the said accident took place and as a result of which a precious life was lost. The said accident easily could be averted if the concerned was not negligent to his duty. It is seen that at the place of accident around the area there was sufficient arrangement of light and for which there was sufficient scope on the part of the concerned workman to drive his dumper cautiously with a view to avoid that accident, but he did not consider necessary to do so and for which the said accident took place. Considering all aspects I, therefore, held that the charge which has been brought against the concerned workman has well been established.

7. Now the point for consideration is whether that order of dismissal issued by the disciplinary authority was fair, proper and in accordance with the principle of natural justice and if not whether such order needs modification as per provision laid down under Section 11A of the I.D. Act. In course of hearing learned Advocate for the concerned workman relied on two decisions reported in 2002 Lab I.C. 1001 and 2002 Lab I.C. 2116. I have carefully considered the both the decisions and I hold that the observation made by Their Lordships in the said two decisions are not applicable in the instant case because of the fact that the concerned workman was not acquitted from the charges brought against him in the Criminal case. Learned Advocate for the concerned workman further submitted that chargesheet issued against the concerned workman was with a direction to give his reply within 48 hours under clause 27.1 of the Certified Standing Order. Disclosing this fact learned Advocate for the concerned workman submitted that provision as laid down in Clause 27-1 of the Certified S.O. is in respect of minor punishment and not major punishments. Learned Advocate submitted further that infringing the provison as laid down in clause 27.1 of the Certified S.O. the management dismissed him from service which has to be considered as gross-illegality. Learned Advocate for the management submitted that the time 48 hours which was given to the concerned workman to submit his reply does not mean that miner penalty should his imposed upon him if the charge is proved. He submitted that considering the gravity of the offence such short time was given to the workman for his reply. Actually it has to be considered the gravity of the offence committed by the concerned workman. Disclosing this fact the learned Advocate for the management submitted that as a result of rash and negligent driving of the Dumper bearing No.730 by the concerned workman the said accident took place and as a result of which a preceious life was lost. It was the gross dereliction of duty of the concerned workman. Had that not been so the said accident could have been averted easily. Accordingly the disciplinary authority did not commit any illegality and impropriety in dismissing the concerned workman from his service. The offence which the concerned workman committed in any circumstances cannot be considered as a minor offence though 48 hours time was given to the concerned workman. It is further seen that the charges have been established against him. In course of departmental enquiry, there is no scope to say that the concerned workman got his order of acquittal from the Criminal Court on the contrary it speaks clearly that due to carelessness, the Investigating Officer could not submit his report in final form within the statutory period as laid down under Section 167(5) Cr. P. C. and as a result of which the learned C.J.M. was compelled to stop further investigation of the case. Considering the gravity of the offence I find no scope to say that the disciplinary authority illegally and also violating the principles of natural justice dismissed the concerned workman from service. A dumper has to be considered as a very heavy vehicle and naturally experienced drivers are entrusted to drive such heavy vehicle. It is seen that the concerned workman operated the said dumper in a very negligent manner and for which the said accident took place and a precious life was lost. Accordingly if this aspect is considered I should say that the management did not commit any illegality in dismissing the concerned workman from his service. Accordingly after

careful consideration of all facts and circumstances I held that there is no ground to modify the order of dismissal as per provision laid down under Section 11A of the I. D. Act. In the result, the following Award is rendered :—

"The action of the management of South Tisra Colliery of M/s.BCCL in dismissing the workman Shri Amirul Mia from the service w.e.f. 3-4-95 of the company is justified. Consequently, the concerned workman is not entitled to get any releif."

B. BISWAS, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 426.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I, धनबाद के पंचाट (संदर्भ संख्या 124/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2003 को प्राप्त हुआ था।

[सं. एल-20012/34/99-आई. आर. (सी.-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 426.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 124/99) of the Central Government Industrial Tribunal-I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 3-1-2003.

[No. L-20012/34/99-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 124 of 1999

Parties :

Employers in relation to the management of Kusunda Area of M/s. BCC Ltd.

AND

Their Workmen

Present :

Shri S. H. Kazmi, Presiding Officer

Appearances :

For the Employers : Shri D. K. Verma Advocate

For the Workman : None

STATE : Jharkhand INDUSTRY : Coal

Dated, the 16th December, 2002

AWARD

By Order No. L-20012/34/99-I. R (C-I) dated 4-6-1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to this Tribunal :

"Whether the action of the management for not providing the employment to Sri Sukar Bhuia, who was Miner at the time of death of his father late Baisakhu Bhuia? If not, what relief he is entitled for?"

2. It appears from the record that this case is pending since long for filling rejoinder and documents on behalf of the workman and for the said purpose several adjournments were granted from time to time. Today i.e. 16-12-2002 again the position remains the same. As such, it is evident that the workman or the sponsoring union has lost interest and does not want to pursue this case any futher. Considering the circumstances it is needless to keep this case pending for any longer.

3. In such circumstances, I render a 'No Dispute' award this reference case.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 427.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एअर इंडिया लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I, मुम्बई के पंचाट (संदर्भ संख्या 03/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-1-2003 को प्राप्त हुआ था।

[सं. एल-11012/5/94-आई. आर. (सी.-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 427.—In pursuance of Section 17 of the Industrial Dispute Act 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/96) of the Central Government Industrial Tribunal I, Mumbai now as shown in the Annexure in the Industrial Dispute

between the employers in relation to the management of Air India Ltd. and their workman, which was received by the Central Government on 3-01-03.

[No. L-11012/5/94-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI
PRESENT:
Shri Justice S.C. PANDEY
Presiding Officer

REFERENCE NO. CGIT-03/1996

Parties : Employers in relation to the management of Air India

And

Their workmen

Appearances :

For the Management : Mrs. Pooja Kulkarni, Adv.

For the Workman : Ms. K.N. Samant, Adv.

STATE : Maharashtra

Mumbai, dated the 18th day of December, 2002

AWARD

1. This is a reference made by Central Government for adjudication the following question referred to this Tribunal in exercise of its power under Section 10(1) (d) and (2 A) thereof of the Industrial Dispute Act, 1947 (the Act for short).

> "Whether the action of the management of Air India, now Air India Ltd., in terminating the service of Mr. M. R. Jadhav, Loader w.e.f. 29-8-89 is justified ? If not, to what relief the workman is entitled ?"

2. By Part-I Award dated 07th July 1999, Shri Justice C.V. Goverdhan set aside the enquiry held against the workman as not Valid and Proper. An apportunity was given to the management of Air India to justify the action taken by it against the workman in terminating his services.

3. The workman was removed from his service w.e.f. 29-8-89. He started his career as a casual labour. The order dated 29-8-89 removing the workman from service states that as per charge sheet dated 3/4 July, 1989 the workman remained at absent from duty for 162 days between June 1988 to May 1989. Now the Air India Ltd. is required to prove the facts on which the order is based.

4. The Management of Air India Ltd.is required to prove aforesaid charge of absence of workman for 162 days between June 1988 to May 1989 independent of the enquiry which has been held to be vitiated. The Air India examined three witness. The affidavit of Shri. Anant Rane, and D. Selvanathan was 27-7-1999. Another affidavit of Shri V.V. Damle was filed on 31-1-2002. They were cross examined on behalf of workman on 31-1-2002. Thereafter, the evidence of Air India Ltd. was closed. The workman filed his affidavit on 04-04-2002. He was cross-examined on 28-8-2002. Thereafter, the workman closed his case.

5. The affidavit of Anant Rane is to the effect that the workman was absent from June 1988 to May 1989. The paragraph 4 of the examination in chief (affidavit) does not disclose any evidence regarding the absence of workman from June 1988 to May 1989. No extracts of registers have been filed. The charge sheets mentioned in paragraph 3 refer to period earlier to June 1988 to May 1989. The other charge sheets referred to in paragraph 3 are not helpful in any way on the question commission of misconduct between June 1988 to May 1989. In cross-examination this witness admitted that the workman was not working under him. He admitted that the workman was allowed to join services W1, W4, and Ex. W6. The witness admitted he had learnt about absence of the workman between October 1987 to October 1988, Jan. 1987 to June 1987. He was unable to deny that the workman was absent from his duty for period given by him in his affidavit on account of illness. The witness answered "I was not knowing it". The evidence of D. Selvanathan in his examination in chief (affidavit) is for four charge sheets dated for absence for 54 days between October 1 1987 to February 29, 1988, for 39 days from Jan. 1987 to June 1987, 66 days from 1st April, 1983 to 31st March, 1984. In paragraph 4 he has one copy of the order of punishment dated 15-10-1984. Even this witness does not prove the absence of workman from June 1988 to May 1989 (162) days. Filing of the charge sheets does not amount to proof of absence. In cross-examination this witness admitted that he had no personal knowledge about the workman's absence as he had not served under him. He was unable to say if the absence shown was regularized by granting leave without pay. He was not evevn aware if the workman had suffered break in service. He was even unaware whether an enquiry was held prior to passing of the order dated 15-10-1984. Mr. V.V. Damble Asstt. Manager, (Personnel) of Air India Ltd. filed his affidavit to prove charge sheet dated July 3, 1989 which shows that workman was charged with absence without leave from June 1988 to May 1989. He has filed a copy of leave register. He has placed on record a letter dated 11th July given by the workman in reply to order sheet whereby he admitted his absence for the period. In cross-examination this witness admitted that he was not in a position to say whether on previous occasions the absence of the workman was regularized.

6. However, the workman admitted in his affidavit that he was absent for 162 days. He also admitted that in the reply to the charge sheet dated 3rd July he had written

the letter dated 11th July, 1989 admitting that he was absent without leave. He had filed medical fitness certificate Ex. W1 to Ex W9 to show that his previous absence was condoned and regularized. In cross-examination this witness admit that he had not filed any medical certificate for 162 days before the management. Nor had he filed any Medical Certificate on record before this tribunal.

In view of the aforesaid the absence for 162 days without sanction of leave is proved. The workman had admitted his misconduct and he could not give any explanation regarding his absence before this tribunal. The previous record proved by Anant Rane and D. Selvanathan proves that the workman was charge sheeted earlier for absence. His previous record does not justify exercise of power under section 11-A of the Act.

8. The result is that the reference is answered by saying termination of services of the workman Shri M.R. Jadhav is legal and justified. He is not entitled to any relief.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 428.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअर इंडिया लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, मुम्बई के पंचाट (संदर्भ संख्या 15/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2003 को प्राप्त हुआ था।

[सं. एल-11012/63/99-आई. आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 428.—In pursuance of Section 17 of the Industrial Dispute Act 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/2000) of the Central Government Industrial Tribunal-II, Mumbai, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Air India Ltd. and their workman, which was received by the Central Govemment on 6-1-2003.

[No. L-11012/63/99-IR(C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

S. N. SAUNDANKAR: Presiding Officer

REFERENCE NO. CGIT-2/15 OF 2000

EMPLOLYERS IN RELATION TO THE MANAGEMENT OF M/s. AIR INDIA LIMITED

The Managing Director
Air India Limited
Air India Building
Nariman Point
Mumbai-400021.

AND

THEIR WORKMEN.

Ms. Sanjana Singh
7 A/133 CGS Quarters\
Antop Hill
Mumbai-400037.

APPEARANCES:

For the Empolyers : Mr. L. L.D 'Souza
Representative

For the Workman : Mr. Mohan Bir Singh
Advocate

MUMBAI, dated 5th December 2002

AWARD PART-I

The Government of India Ministry of Labour by its Order No. L-11012/63/99-IR(C-I) dated 4-2-2000 have referred the following dispute for adjudication to this Tribunal in exercise of powers conferred on it by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947:

> "Whether the action of the management of Air India Ltd., Mumbai in dismissing the services of Ms. Sanjana Singh, Ex-Air Hostess w.e.f. 24-11-1998 is legal and justified ? If not what relief the workman concerned is entitled to ?"

2. Workman Ms. Sanjana Singh had joined as Air hostess in infight service department of Air India Ltd. in 1976. By claim Statement (Ex-6) workman averred that the management suspended her on 28-2-97 and issued chargesheet dated 7/10-4-97 by Sr. Manager Cabin Crew Admn. alleging that she was apprehended by the Customs of London and found in possession of large quantities of bidis and tobacco, i.e. 2500 bidies and 5.1 kg. of Khaini (chewable tobacco) thereby committed breach of law applicable to establishment and act subversive of discipline under the Model Standing Orders applicable to her at that time. Workman pleaded that she replied the said charge sheet by letter dated 23-4-97 however, dissatisfied with that the Sr. Manager Cabin Crew Admn. vide letter dated 25-4-97 ordered enquiry and that enquiry held for nine dates, however by the letter dated 19-2-98 management informed her that the Certified Standing Orders as applicable to Air India Ltd. have come into force and that the General Manager Inflight Service is the competent authority and that instead of of earlier charges, now enquity will be held

on charges; breach of any law, rules, regulations applicable to the establishment and carrying goods in the aircraft in circumstances which give rise to a presumption that it is done with the object of private trading or pecuniary gain. It is averred the enquiry committee without taking that letter on record and without giving opportunity to defend against the charges levelled against her by the letter dated 19/2/98, conducted the enquiry. It is pleaded that charges levelled vide chargesheet dated 7/10-4-7 were substantially different from the charges vide chargesheet dated 19/2/98 and that two chargesheets were issued by two different authorities which created confusion in the mind of workman and hampered a proper defence, Consequently enquiry is defective and illegal. It is pleaded that enquiry committee found the workman guilty of the charges levelled in chargesheet dated 7/10-4-97 without conducting proceedings in respect thereof. It is contended that the findings recorded by the Enquiry Committee are totally perverse, in-as-much as there was no evidence, no discussions or analysis of evidence to reach the conclusions. It is contended that the workman had categorically pointed out the authorities since beginning that the items in question were for personal use as her husband an employee as a porter in a transport co. is a chain bidi smoker and smokes 60 bidis a day besides eating 15-20 packets of the chowable tobacco. It is contended in that context the presumption drawn by Enquiry Committee that the said items were for private trading or pecuniary gain is devoid of substances. It is averred by the workman, the persons possessing more quantities of above items were awarded minor punishments like warning, censure etc., however she being a Scheduled Caste Community was discriminated, though there was no obligation to declare the 2500 bidis or 5.1 kg. chewable tobacco as per the applicable laws as the goods are not contraband. It is contended that on the basis of the enquiry report workman was proposed to dismiss by the order dated 1-6-98 which she replied on 17-6-98 and that she preferred appeal on 19-12-98 but was not considered though the High Court in Writ Petition No. 1685 of 1999 directed the management in that context. It is contended enquiry was a farce and not in accordance with the principles of natural justice as the chargesheet was not issued by the competent authority and that management though examined certain persons, workman was not allowed to take their cross-examination. Consequently according to workman the enquiry was improper and the findings perverse, therefore management be directed to reinstate her with full back wages.

3. Management resisted the claim of workman by filing written statement (Ex-7) contending that the workman was confirmed in the post of Air hostess in 1978 after extending her probation period and that in the year 1992 she was redesignated as Check Air Hostess. It is pleaded that after operating flight AI-111 on 26/2/97 arriving at London Airport workman was apprehended by H.M. Customs for being found in possession of 2500 bidies and 5.1 kgs. of chewing tobacco, which were not declared in the crew declaration form, therefore she was charged with Customs offence and was produced before Uxbridge Magistrate's Court on 27-2-97 and a fine of UK Pounds 150 was imposed upon her which she could not pay therefore, she was shiften to Halloway Prison. However subsequently on payment of fine she was released. It is averred that workman was similarly intercepted earlier by H.M. Customs at London being in possession of excess tobacco goods in May 1996 and was imposed penalty of 371 pounds out of which 271 pounds is outstanding. It is alleged workman since involved in smuggling tobacco goods in saleable quantity in UK on the occassions referred to above, inspite of specific instructions to the Cabin Crew to strictly adhere to the Immigration, Customs and Local laws of the countries visited. She was placed under suspension pending enquiry vide chargesheet dated 7/10-4-97. It is pleaded that the workman vide letter dated 23-4-97 apologised, however the competent authority decided to hold the enquiry and that the Enquiry Committee giving sufficient opportunity, in the light of chargesheet dated 19-2-98 held the enlquiry. It is contended Enquiry Committee held the workman guilty for the charges vide report dated 14-5-98 and based on the report the workman's say was sought on 20-5-98 and Considering the serious misconduct under the Certified Standing Orders under the Clauses 19(2)(viii) and 19(2)(xxv) she was dismissed from service by order dated 19/20-8-98 and that appeal dated 19-12-98 filed by workman against the said order, was rejected on 27-1-99. It is pleaded workman declined to cross-examine sole witness of management and that Enquiry Committee on the basis of documents and evidence recorded the findings which are not at all perverse. It is contended enquiry being fair and proper and the punishment adequate claim of workman be dismissed in limine being devoid of substance.

4. Vide rejoinder (Ex-8) workman reiterated the recitals in claim statement denying the averments in the written statement.

5. On the basis of the pleadings issues were framed (Ex-10). In the context of preliminary issues workman filed affidavit in lieu of Examination-in-Chief (Ex-35) and in support of her case affidavit of Sr. Check Flight Pursuer Mr. Karam Singh (Ex-45) and closed oral evidence vide purshis (Ex-47). In rebuttal, Sr. Manager Flight Service Mrs. Modi filed affidavit (Ex-50) and management closed oral evidence vide purshis (Ex-55).

6. Workman filed written submissions (Ex-57) with copies of rulings (Ex-58) and management Company Exhibit-59. On perusing the record as a whole, written submissions and hearing both the counsels at length, I record my

findings on the following preliminary issues for the reasons stated below :

	ISSUES	FINDINGS
1.	Whether the domestic inquiry held against the workman was as per the principles of natural justice ?	No
2.	Whether the findings of the Enquiry Committee are perverse ?	Yes

REASONS

7. As the threshold it is to be noted that at this stage we have to see whether the enquiry held against the workman was fair or not and whether the findings are perverse or not, consequently there is no necessity to go into the merits of the matter as regards the action of the management. So far domestic enquiry is concerned. Their Lordships of the Apex Court in **Sur Enamel and Stamping Works** Vs. **Their Workmen 1963 II LLJ SSC pg. 367** ruled that enquiry cannot be said to have been properly held unless :

(1) the employee proceeded against has been informed clearly of the charges levelled against him.

(2) the witneses are examined-ordinarily in the presence of the employee in respect of the charges.

(3) the employee is given a fair opportunity to cross examine withesses.

(4) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and

(5) the Inquiry Officer records his findings with reasons there for the same in his report.

8. According to workman enquiry conducted against her was against the principles of natural justice and that findings recorded by Enquiry Committee are perverse. She disclosed that she was issued chargesheet dated 7/10-4-97 under the Model Standing Orders alleging breach of law to the establishment, act of subversive of discipline and that revised chargesheet dated 19-2-98 was on breach of any law, rules, regulations applicable to establishment, carrying goods in an aircraft in circumstances which give rise to a presumption that it is done with the object of private trading or pecuniary gain. Both the chargesheets were of distinct nature, thereby she was confused and consequently prejudice had caused to her. Management witness Mrs. Modi pointed out that by the letter dated 19-2-98 only the heads of charges were modified in view of the applicability of Certified Standing Orders w.e.f. January 1998 and that in that enquiry workman participated. So far chargesheets are concerned, Mrs. Modi in cross-examination admits that she was not aware whether workman was given another chargesheet except dated 7/10-4-97 and that she made enquiry of that chargesheet and not other chargesheet, whereas inquiry report is in connection with two chargesheets. She further admits that Standing Orders Regulation 19(2)(xxv) of Certified Standing Orders is in three parts, part-I relates to smuggling/ concerned with smuggling, part-II private trading and carrying goods for pecuniary gain and part-III carrying currencies or instrument of exchange and admits that workman was charged with part-II and not part-I or part-III. She is unable to tell which chargesheet she had read out. She is aware on the Certified Standing Orders introducted in February 1998, but she has not read the procedure for disciplinary action contained in the Certified Standing Orders. She admits that workman had denied the charges. From these admissions, convener of the Enquiry Committee Mrs. Modi herself was not aware on the procedure of disciplinary action and that she made enquiry of the first chargesheet without placing on record the chargesheet dated 19-2-98, though admittedly made report of the two chargesheets. The Learned representative for the management Shri L.L. D'Souza iniviting attention to the written submissions urged that workman admits in cross-examination para 19 that she had received chargesheet and she had replied it and enquiry was made on the chargesheet which she had received and in the enquiry she participated. He submits a chargesheet is nothing but a statement conveying charges/allegations made against the delinquent employee and had the workman not understood she would have raised objection then. He submits that workman by many letters/explanation/say prayed for apology thereby admitting her guilt and also before the Court in London therefore, in fact there is no necessity for employer to hold the enquiry and that in the instant case, there is no necessity for employer to produce any evidence inview of admissions and that enquiry is an empty formality for which he relied on the decision of Bombay High Court in **Syed Waris Hussain** Vs. **Firestone Tyre and Rubber Company of India (Pvt) Ltd. and Anr. reported in 1995 II LLJ page 292 the decision of Karnataka High Court in Hindustan Aeronautics Ltd.** Vs. **B. Gulab Singh & Ors. reported in 1986 (52) FLR page 443 and also the decision of Apex Court in Central Bank of India** Vs. **Karunamoy Banerjee reported in 1967 FJR page 481.** At this juncture the Learned Counsel for the workman Mr. Singh urged with force that admissions of the adversary is the best evidence and when Enquiry Committee member Mrs. Modi stated that her report is in connection with two chargesheets, however held the enquiry of one chargesheet itself indicate that workman was kept away from the enquiry of one chargesheet which is breach of natural justice and thereby the enquiry is defective. I find substance in the submission of Mr. Singh on going through the cross-examination of Mrs. Modi and in the light of the decision

of the Apex Court referred to Supra in para 7. It is relevant to see whether the workman knew the nature of accusation and whether she had been given opportunity to state her case and whether the authority has acted in good faith to decide whether the principles of natural justice are violated or not.

9. According to Mrs. Modi she made enquiry of chargesheet dated 7/10-4-97 in connection with breach of law committed by workman of non-declaration of 2500 bidies and 5.1 kgs. chewing tobacco. The subsequent chargesheet dated 19-2-98 was concerning to smuggling of goods. Mr. D'Souza urged that carrying any item which ought to be declared but which were not so declared tantamounts to smuggling even it meant for personal use. What is to be seen whether workman knew the accusations/ charges she was going to face and on going through the discussion supra in the light of the admissions given by Mrs. Modi, it can safely be negated consequently enquiry vitiates.

10. So far the issuance of chargesheet according to workman, Sr. Manager Cabin Crew Admn who issued chargesheet was not empowered to issue under the Model Standing Orders. Workman was admitedly Check Air Hostess since 1992. According to Mrs. Modi chargesheet was issued by Sr. Manager Cabin Crew Admn who is not competent authority to issue chargesheet to Check Air Hostess. She admits that Sr. Manager Cabin Crew Admn. found the explanation given by the workman to the chargesheet not satisfactory. The Learned representative for the management Mr. D'Souza submits that since chargesheet is a statement conveying the charges/ allegations the question of any competent officer issuing any chargesheet does not arise and that even if the chargesheet is issued by an officer not competent to issue, the same will not be fatal to the enquiry proceedings. He has relied on the decision of Karnataka High Court in S. Nagaish V/s. Indian Aluminium Co. Ltd. reported in **1990(2) LLN 750**. Here point does not rest on the authority of issuance of chagesheet but relevant is in-competant person considered the explanation of workman not satisfactory resulting, inholding enquiry. Had the person authorised to issue chargesheet considering the explanation dated 7/4/97 taken decision to initiate the enquiry, matter would have been different, when workman since begining pointed out the items carried were for personal use straight-away denying the charges. Decision cited by Mr. D'Souza in view of the position is no avail to him. It is therefore, apparent that the inquiry is defective for not issuing chargesheet by a authorised person and considered explanation not satisfactory.

11. So far the opportunity is concerned, according to workman she had requested to allow her to engage a lawyer to defend herself but that was not allowed. Management contended that workman was told that she can engage co-worker as defence representative. At this juncture, workman pointed out that she was not given opportunity even to engage co-worker. Mrs. Modi is not able to point out from the record as to on which date she had told so to workman. So far defence representative is concerned, it is seen from the enquiry proceedings filed with Exhibit 9 page 6 Mrs. Modi had given 5 minutes time to workman to engage a defence representative. This proceeding find place at Ex-21. On minute perusal of the proceeding shows surprisingly, opportunity in minutes to engage a defence representative was given which was irrational in which humanly impossible to do so, which shows not merely the denial of opportunity but points on malafides in which the enquiry committee had conducted.

12. So far the conduct of enquiry is concerned, workman stated that she was not given proper opportunity and therefore enquiry is against the principles of natural justice. Workman no doubt admitted in cross-examination para 19 that she participated in the enquiry, however admissions in the cross-examination given by Mrs. Modi itself shows that enquiry was not proper. In cross-examination para 11 Mrs. Modi stated :

> It is correct no proceedings were conducted on 30-6-97 I do not remember whether copy of the note dated 30-6-97 was given to workman. It is correct that no enquiry was conducted on 1-7-97. It is correct that after 2-7-97 next date was fixed on 31-7-97, we conducted proceedings on 31-7-97. I again say that no proceeding was held on 31-7-97. Notice of enquiry dated 31-7-97 was sent on 29-7-97. From the record I can't say whether that notice was received by workman for the date 31-7-97. It is correct on 4-8-97 we decided to continue enquiry on 5-8-97. I am unable to say whether communication of date of enquiry dated 5-8-97 was given on the same date no enquiry proceeding was conducted on 4-9-97, It is correct enquiry proceeding was does not mention on the enquiry held on 30-6-97 and 1-7-97. It is correct no further date was given to employee on 4-8-97. I had decided to hold enquiry on 8-9-97. I do not posses documentary evidence to show that workman was made to know the date 8-9-97. It is correct that I had decided to hold enquiry exparte on 8-9-97 without ascertaining whether she had knowledge of that date of enquiry.

All the above said admissions go to show that without knowledge to the workman the enquiry was fixed and the proceedings was recorded that is, behind her back. Ordinarily enquiry is to be held in the presence of employee, however the Enquiry Committee acted contrary to that which is certainly against the principles of natural justice and fairplay.

13. It is to be noted that according to Mrs. Modi under the Certified Standing Orders right to appeal is an

integral part of procedure for the disciplinary action. Admittedly by letter dated 19-2-98 the enquiry was to be conducted as per the Certified Standing Orders in view of the applicability of the same w.e.f. January 1998. According to workman she had preferred appeal dated 19-12-98 to the appellate authority for her illegal dismissal however, employer refused to consider her appeal on the spacious plea that they had filed an Approval Application before the Industrial Tribunal and that in the Writ Petition No. 1685 of 1999 filed by employer challenging the Award of Industrial Tribunal dated 24-5-99, employer mentioned before the Hon'ble High Court that the Director Inflight Service will hear the appeal of workman in accordance with law and pass order within 8 days and that workman agreed that she will appear before the Appellate authority and that accordingly she was called for personal hearing on 29-9-99 however, no order has been passed by Appellate Authority so far by which according to her, she has been denied a valuable right of hearing of her appeal which vitiates the entire enquiry. Management pointed out that appeal of workman was rejected on 27-1-99 vide page 91-93 (Ex-12). Workman denied that copy is the order in appeal. It is significant to note that as seen from the record the Hon'ble High Court in the above said writ by order dated 25-8-99 directed that Director Inflight Service, to hear the appeal of workman within 8 days. If that is so, there can not be order on appeal on 27-1-99. The Learned Counsel for the workman Shri Singh inviting attention of the Tribunal to the voluminous record urged that, the employer adopting unfair labour practice with vindictive attitude, most unbecoming on their part, pointed out that they have decided the appeal by creating false evidence for which contempt proceedings needs to be initiated by this Tribunal. It is seen from the record the management before the Hon'ble High Court Bombay on 25-8-99 mentioned that Director Inflight Services will hear the appeal of workman, therefore, there cannot be order of appeal dated 27-1-99. Order dated 27-1-99 is of General Manager (Co-ordination) and not of Director Inflight Services. It is thus clear that the management is not at all bonafide in this context. The question whether in a given case principles of natural justice are violated or not is to be found out on consideration as to whether the procedure adopted by the appropriate authority is in accordance with law and whether the authority has acted in good faith. Rules of natural justice are not embodied rules. Whether prejudice has caused to the workman is to be looked at from the angle of justice or of natural justice. The Objective of principles of natural justice is to ensure that justice is done. Justice means justice between both parties. The interest of justice equally demands that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end as observed by Hon'ble Supreme Court in State Bank of Patiala & Ors. Vs. S.K. Sharma reported in **1996 II CLR Page 29.** If we look the evidence in the light of the observation as above, it is apparant that the workman was not informed clearly of the charges levelled against her, proceeding was not properly recorded and enquiry was done behind the back, she was not given fair opportunity in the enquiry thereby prejudice had caused to her and that these factors contravened the tests laid down in Sur Enamel case, consequently enquiry can said to be not fair and proper and thereby vitiates.

14. So far the findings according to the workman are perverse is concerned, 'Perversity' is that when the findings are such which no reasonable person would have arrived at on the basis of material before him as pointed out by the Hon'ble Apex Court in Central Bank of India V/s. Prakash Jain reported in **1969 II LLJ 877.** The Learned Counsel for workman Mr. Singh submits that the findings recorded by Enquiry Committee are totally perverse in-as-much-as without reading the procedure for disciplinary action contained in the Certified Standing Orders without knowing the value of the items at the relevant time in India and London, and the difference between bidies and Cigarettes, though the form Ex-9/22 was essential for the purpose of enquiry did not consider the instructions on the reverse of the form and on presumption and conjunctures, recorded in the report. Mrs. Modi in cross-examination para 8 admits that all Air Hostesses are required to fill up the Crew Baggage Declaration Form (Ex-9/22) which lists out what is to be declared by the crew on arrival. The allegation against the workman was that she had not declared 2500 bidies and 5.1 Kgs. Khaini (chewing tobacco) in this form at the time of arrival in London by flight AI-111 dated 26-2-97. Workman's witness Mr. Karan Singh Sr. Check Flight Pursuer clearly deposed that this form has under-gone no change on which reverse side stipulates what items in possession with the crew members are required to be declared before arriving in London. He further disclosed that form Ex-9/22 was printed in May 1994. No doubt by way of cross-examination this witness is unaware for which period the form referred to was valid. Since Mrs. Modi is aware on the form and the items mentioned on reverse side indicates which items with weight are to be declared and that there was no evidence before Enquiry Committee on the prices to presume that the same were carried with the object of private trading or for pecuniary gain. Therefore, the findings of Enquiry Committee on indulging workman in smuggling is inconsistant.

15. The Learned Counsel for the workman Mr. Singh submits that report does not mention on the chargesheet dated 19-2-98, nor it shows the analysis, discussion and the reasoning, which was obligatory on the Committee therefore, the enquiry as a whole is bad. For this he relied on Anilkumar V/s Presiding Officer and Ors. reported in **AIR 1985 SC 1121** wherein Their Lordships observed in para 5-6 :

"An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sence that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In Madhya Pradesh Industries Ltd. Vs. Union of India (1966) 1 SCR 466 : (AIR 1966 SC 671) this Court observed that a speaking order will be best be a reasonable and at its worst be atleast a plausible one. The public should not be deprived of this only safeguard. Similarly in Mahabir Prasad Vs. State of Uttar Pradesh (1971) 1 SCR 201 : (AIR 1970 SC 1302) this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable."

15. The learned representative for the management Mr. L.L. D'Souza submits, workman herself by explanations/letters admitted at many places on possessing the 2500 bidies and 5.1 Kgs. Chewing tobacco arriving in London. Duty was chargeable on it and that she was attempting evasion of the duty thereon. She admitted the guilt before the Court in London, which is the record and that this record clearly indicates the position and on that strength, the report is prepared therefore, by any stretch of imagination report can not be said to be perverse he has placed reliance on decision of Bombay High Court in Hindustan Lever Ltd. Vs. Hindustan Lever Employees Union reported in **1999 I CLR page 96** and the decision of Hon'ble Apex Court in Food Corp. of India workers Union Vs. Food Corp. of India reported in **1996 II LLJ 920.** The inquiry report is at Ex-37, based on which workman was dismissed. On going through the observations in the decision of the Hon'ble Apex Court in Anilkumar referred to in para 15 it is apparant that report is laconic un-reasoned and the findings recorded, based on assumptions and presumptions is unsustainable. Mrs. Modi the convenor of the Committee who prepared the report admits in cross-examination that during the course of enquiry she did not bother to find out the prices of the commodities which according to her non-declaration of 2500 bidies and 5.1 Kgs. Chewing tobacco is breach of law committed by workman. Form Ex-9/22 though was essential for the enquiry, was not with her, and instruction on the reverse of the form were not considered and that she had presumed that bidies and cigarettes are the same. These admissions go to show lack of application of mind in recording the findings therefore, the findings are perverse. Infact since enquiry vitiates there is no need to consider the point of perversity as held by His Lordship of Bombay High Court in C.R. CST Mumbai Vs. Rajankumar Mohalik reported in **2000 II CLR 117.**

16. In view of the discussions supra it is apparent that the domestic enquiry held against the workman was not as per the principles of natural justice and that the findings of the Enquiry Committee are perverse. Preliminary issues are, therefore, answered accodingly and hence the order :

ORDER

The domestic enquiry held against the workman Mrs. Sanjana Singh was not as per the principles of natural justice and the findings of the Enquiry Committee are perverse.

Management is given an opportunity to lead evidence to justify its action.

S.N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 429.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इण्डियन एअरलांइस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, मुम्बई के पंचाट (संदर्भ संख्या 115/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-1-2003 को प्राप्त हुआ था।

[सं. एल-11012/135/2000-आई. आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th January, 2003

S.O. 429.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award

(Ref. No.115/2000) of the Central Government Industrial Tribunal,II Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Airlines and their workman, which was received by the Central Government on 03-01-2003.

[No. L-11012/135/2000-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE
THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II MUMBAI

PRESENT

S. N. SUNDANKAR : Presiding Officer

REFERENCE NO. CGIT-2/115 OF 2000.

EMPLOYERS IN RELATION TO THE MANAGEMENT OF INDIAN AIRIRLINES.

The Regional Director,
Indian Airlines,
Western Region,
New Engineering Complex,
Mumbai-400 099.

AND

THEIR WORKMEN

The Chairman,
Air Corporations Employees Union,
C/o Indian Airlines,
New Engineering Complex,
Sahar, Mumbai-400 099.

APPEARANCES:

For the Employer : Ms. P. A. Kulkarni, Representative

For the Workmen : Mr. A. K. Menon, Representative

Mumbai Dated 15th November 2002

AWARD (PART-I)

The Government of India Ministry of Labour by its Order No. L-11012/135/2000-IR (C-I) dated 29-11-2000; 29-1-2001 and 13-2-2001 in exercise of the powers conferred by calause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

> "Whether the action of M/s. Indian Airlines Ltd. in terminating Shri S. D. Unawane from the services of the Indian Airlines is justified and proper ? If not, to what relief is the workmen entitled ?"

2. Workman Shri S. D. Unawane was working as a Helper (Commercial) in Indian Airlines Ltd. Bombay in the year 1991. It is pleaded by the union vide Statement of Claim (Exhibit-4) that on 21-11-91 at 11.45 Hrs. workman was arrested by police, Narcotics Cell on the allegation that he alongwith one were found in possession of Heroin weighing 500 gms near BEST Bus Stop of Route No. 253 Nr. Motilal Nagar, Goregaon (W) Bombay and that he was chargesheeted in C.R. No. 79/91 under the provisions of N.D.P.S. Act, 1985. It is averred since workmen was arrested he was suspended by the order dated 26-11-91 w.e.f. 21-11-91 as the behaviour of the workman was subversive of discipline and his conduct in private life prejudicial to the reputation of the Corporation under the Standing Orders. It is pleaded on releasing the workman on bail suspension was revoked by the letter dated 17-9-92 in view of the inquiry of the chargesheet dated 9/13-3-93. It is pleaded that workman was charged by that chargesheet as instituted by police in the Special Court and inspite of that inquiry was held against him, contray to the provisions of law. It is pleaded inquiry was against the Principles of Natural Justice as the Competent Court inspite of acquitted the workmen on 12-7-96 inquiry was continued on the same set of facts and evidence. It is pleaded inquiry officer relying on the evidence which was rejected by the court held him guilty therefore the findings arrived at against him by the inquiry officer, are perverse. It is pleaded workman was not allowed to engage advocate in the inquiry and that all the witnesses mentioned in the chargesheet were not examined and entirely new persons were examined as witnesses and that he was not fair opportunity to represent thereby prejudice had caused to him. It is contended findings of the inquiry officer dated 30-3-98 are perverse as those are contrary to the findings recorded by the Competent Court, consequently union contended the inquiry being unfair and the findings perverse be set aside.

3. Management, Indian Airlines resisted the claim of union by filing Written Statement (Ex-13) contending that Senior Inspector of Police (Narcotics Cell) Mumbai had arrested the workman on 21-11-91 pursuant to recovery from his possession 500gms of Herione a contraband and on this information from police the workman was suspended as the said allegations were prejudicial to the interests of the company. It is pleaded the said misconduct fall under standing orders and therefore workman was chargesheeted and that the inquiry officer giving opportunity to the workman who was reported by his DR Mr. Xavier held him guilty by the report dated 30-3-98. It is pleaded workmans say was sought on the report however disagreeing with his say the Disciplinary Authority removed him from service w.e.f. 18-11-98 as the Approval Application Bearing No.76/98 in Reference No.1/98 filed by the management was allowed by the CGIT-1 Mumbai by order dated 21-12-98. It is pleaded workman is required to maintain absolute integrity and devotion to duty and conduct in

manner to the best interests, credit and prestige of the company and breach of which is 'misconduct' in terms of Standing Order No.16. It is contended departmental proceedings were independent of Criminal proceeding therefore request of workman keeping the inquiry pending was not acceded to as the point in departmental proceedings and the criminal trial were entirely different and distinct. It is contended workman was acquitted by the Special Court on technical ground. In Disciplinary proceedings question was whether such misconduct would merit his removal from service or a lesser punishment whereas in criminal proceeding the question was whether offence registered against him in the N.D.P.S. Act are established, therefore their being different aspects the inquiry was held. It is pleaded sufficient opportunity was given to the workman in the inquiry and that the inquiry was with the object to eradicate the corrupt proclivity on the part of the employees in a public office. It is pleaded there was no provision under the Standing Orders entitling workman to be represented by an outsider a legal practitioner. It is contended the inquiry officer on the basis of the evidence on record before him, held the workman committed misconduct under the Standing Orders and based on that report, he was dismissed w.e.f. 18-11-98. It is contended inquiry being fair and proper and the findings based on the evidence consequently no interference is called.

4. By the Rejoinder (Ex-14) workman pleaded that Police constable and Police Sub-Inspector though not cited in the chargesheet were examined in the Departmental inquiry and that no opportunity was given to cross-examine the Panch Witnesses. It is averred that Departmental proceedings and the Criminal case are based on the same set of facts and evidence. In the circumstances, the management relying on the Judgement of the Special Court, should have drop the inquiry. By reiterating the recitals in the Statement of claim workman/union denied the averments in the Written Statement.

5. On the basis of the pleadings issues were framed at (Ex-15). Both the parties vide purshis (Exhibit-19/20) did not lead oral evidence on preliminary issues about the fairness of inquiry and perversity of findings.

6. Union filed written submissions with copies of rulings (Exhibit-21/23) and the management (Ex-22). On hearing the representatives for both sides, perusing the record as a whole and the written submissions, I record my findings on the following preliminary issues for the reasons stated below :—

	Issues	Findings
1.	Whether the domestic inquiry conducted against the workman was as per the Principles of Natural Justice?	No
2.	Whether the findings of the inquiry officer are perverse?	yes

REASONS

7. Admittedly workman was acquitted by the Special Court under the N.D.P.S. Act, for the offence under Section 29/21 of the Act by the Judgment and order dated 12th July, 96. A domestic inquiry was conducted against the workman for the allegations mentioned in the chargesheet dated 9/13-3-93. According to the workman he was chargesheeted by the police (Narcotics Cell) for the allegations that on 21-11-91 he was found in possession of 500 gm of heroine, a contraband item near Motilal Nagar, Goregaon (W) and the court had acquitted him departmental inquiry for the said chargesheet cannot be conducted. The Learned representative for the union Mr. Menon submits that workman was alleged to be found in possession of contraband articles at Goregaon, that is obviously outside the premises of the establishment and since he was acquitted for the said offence inquiry was an empty formality and that to take a contrary view if permitted, would render the judicial system nugatory therefore Mr. Menon relying on the decisions filed with the submissions urged that holding of inquiry itself is illegal. On the other hand the Learned representative for the management Ms. Kulkarni inviting attention of this court to the detail written submissions and the rulings filed therewith submits that the object of the criminal trial is to punish or deal with the offenders who have committed violation under penal law of the land and that Disciplinary inquiry is for the purpose of dealing with the breach of the service regulations of the employer. She urged that the standard of proof in a criminal trial is proof beyond reasonable doubt and in departmental inquiry, standard of proof is a proof on preponderance of probabilities and that rules of evidence which apply to a criminal trial are not attracted in the case of departmental enquiry. According to Ms. Kulkarni in the disciplinary proceedings the question is whether the delinquent is guilty of such conduct as would merit his removal from service or a lesser punishment as the case may be whereas in the criminal proceedings the question is whether the offences registered against him under the Act are established and if established,what sentence should be imposed upon him. She submits the court acquitted the delinquent on benefit of 'doubt' and not on 'merit' and that only when acquittal was on merits the necessary conclusions would be that the delinquent is entitled to reinstatement as if there is no blot on service and the need for departmental inquiry is obviated, however in the case in hand the acquittal being on technical grounds, inquiry was necessitated.

8. It is well settled that there is no bar for holding departmental inquiry during pendency of the criminal case. By interim Award we have to consider whether the inquiry held against the workman was as per the Principles of Natural Justice and fair play and the findings recorded by

the inquiry officer are perverse. It is, therefore, necessary to see whether the following tests laid down by Their Lordships of the Apex Court in Sur Enamel and Stamping Works V/s. their Workmen 1963 II LLJ SCC pg. 367 are complied with or not :—

(1) the employee proceeded against has been informed clearly of the charges levelled against him,

(2) the witnesses are examined ordinarily in the presence of the employee in respect of the charges,

(3) the employee is given a fair opportunity to cross-examine witnesses,

(4) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and

(5) the inquiry officer records his findings with reasons therefor the same in his report.

9. Union as well as management with list (Ex-16 and 18) filed the inquiry proceedings. Since both the parties did not lead oral evidence it is necessary to look to the inquiry proceedings in detail to see whether the inquiry is fair or not. So far point as regards the charges the chargesheet clearly depicts the charge levelled against him and that by the letter dated 20-10-93 filed with (Exhibit-18) workman was asked to reply the same. It is seen inquiry was held during 5-4-94 to 16-7-97 and that inquiry report was prepared on 30-3-98. It is seen workman contended since beginning that he has been facing criminal trial before the competent court for the same charge on the same set of facts and evidence therefore he would not participate in the inquiry. However, fact is that lateron, he participated in the inquiry alongwith his Defence Representative Mr. Xavier. It is seen from the inquiry proceedings, said Defence representative examined the management witnesses and that workman examined himself and management cross-examined him. It is not that he was not given opportunity to that effect. On perusal of the record it is seen workman gave summation on 15-10-97 and the management also gave their summation and thereafter on 30-3-98 the inquiry officer gave his report holding the workman guilty which clearly indicative to show that giving opportunity findings were recorded.

10. In the domestic inquiry question whether Principles of Natural Justice have been violated or not is being found out on consideration as to whether the proceedure adopted by the appropriate authority is in accordance with the law or not and further whether the delinquent knew what charges he was going to face. Rules of Natural Justice are not embodied rules. The object of the Principles of Natural Justice which are now understood is synonymous with the obligation to provide a fair hearing so as to ensure that justice is done, that there is no failure of justice and every person whose rights are going to be affected by the proposed action gets a fair hearing.

11. The grievance of the workman is that he was not allowed to be represented by a legal adviser in the inquiry while cross-examining the police witnesses which occasioned prejudice. The Learned Representative for the union Mr. Menon inviting attention of the Tribunal to the proceedings pg. 90-137/Ex-18 urged with force that management examined Shri R.R. Bhosale Police Officer to throw light on the offences which according to the management was misconduct and that while examining him the workman since beginning pointed out that he himself and his defence representative Mr. Xavier is not capable to cross-examine for want of legal knowledge and that he pointed out to the inquiry officer his participation in the inquiry is under protest. The demeanour of the workman shows he was helpless in cross examining the management witnesses. Offence as alleged was serious and the same was a charge in the domestic inquiry consequently was also of serious nature. At this juncture, the Learned Representative for the management Ms. Kulkarni submits regulation does not permit the assistance of legal practitioner. We are on the point of fairness of inquiry. The objective is to ensure a fair hearing, a fair deal to the person whose rights are affected. The police officer posted in Narcotics Cell since 1991 attached to Crime Branch (II) was well versed with the provisions of the NDPS Act. As against this, workman is a helper and that his Defence Representative a staff from accounts department, not conversant with the legal proceedings. Here point crops on a fair hearing, a fair deal and as stated above the object is to ensure justice is done. If looked position referred to above certainly can be said that on this point inquiry was not fair. Without according him the due opportunity to cross-examine the police officer without legal assistance was to my view, against the Principles of Natural Justice. Justice means Justice between both the parties. The interests of justice equally demand that the guilty should be punished and technicalities and irregularities which do not occassion failure of justice are not allowed to defeat the ends of justice. Principles of Natural Justice are but the means to achieve the ends of justice, cannot be perverted to achieve the very opposite end which would be a counter productive exercise as observed by Their Lordships of Apex Court in State Bank of Patiala and Ors. V/s. S. K. Sharma 1996 II CLR 29.

12. As stated above, by this interim Award we have to decide as to whether the inquiry was fair and the findings are perverse and not at this stage to go to the root of the action of termination of workman, attracting relevant

provisions. Inquiry officer relying on the evidence of police officer Mr. Bhosale and other, concluded that workman was in possession of contraband articles which according to management amounts to miscounduct under the service regulations, however he was not cross-examined by legally competent person. In this case there is a peculiar circumstance that the incident occurred not connecting to the property/affairs of the Airlines and not within its premises and that witnesses are not from the department. Therefore looking to the matter from the point of view of equity, good conscience and in the light of para 11 Principles of Natural Justice to my view, have been contravened and consequently inquiry vitiates. So, far findings of the inquiry officer according to the workman are perverse, since inquiry vitiates there is no need to consider the same as held by His Lordship of Bombay High Court in C. Rly. CST Mumbai V/s. Rajan Kumar Mohalik reported in 2000 II CLR 117. Assuming that point remains, it is seen from the inquiry proceedings there was no evidence before the inquiry officer and that conclusions drawn by the inquiry officer not based on the independent evidence. 'Perversity' is that when the findings are such which no reasonable person would have arrived at on the basis of the material before him. There being no independent evidence in the circumtances the findings can safely be said to be perverse. Issues are therefore answered accordingly and hence the order:—

ORDER

The domestic inquriy conducted against the workman was not as per the Principles of Natural Justice.The findings of the inquiry officer are perverse. Management is allowed to lead evidence to justify its action.

S.N. SAUNDANKAR, Presiding Officer.

नई दिल्ली, 7 जनवरी, 2003

का.आ. 430.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार साउथ सैन्ट्रल रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बगंलौर के पंचाट (संदर्भ संख्या सी०आर० सं० 9/89) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-01-2003 को प्राप्त हुआ था।

[सं. एल-41012/01/87-डी-II/आई.आर. (बी.-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 7th January, 2003

S. O. 430.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (C.R. No. 9/89) of the Central Government Industrial Tribunal./Labour Court Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of South Central Railway and their workman, which was received by the Central Government on 6-1-2003.

[No. L-41012/01/87-DII/IR(B-1)]

AJAY KUMAR, Desk Officer.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated: 23rd December, 2002
PRESENT

HON'BLE SHRI V.N.KULKARNI, B.COM, LLB, PRESIDING OFFICER CGIT- CUM - LABOUR COURT, BANGALORE.

C. R. NO. 9/89

I PARTY	**II PARTY**
Shri S. Khaja Hussain APS Khalasi, C/o Shaik Shah Valim, Railway Quarters No. 562'B' Guntakal, Andhra Pradesh	The Divisional Railway Manager, South Central Railway, Guntakal Andhra Pradesh

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order. No. L- 41012/1/87-D.II (B) dated 5th January, 1989 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the Divisional Railway Authorities, Guntakal, in removing the memo of Shri S. Khaja Hussain, APS Khalasi from rolls and terminating his services with effect from 10-4-1981 is justified? If not, to what relief the workman is entitled to?"

2. The first party was working with the Second Party. His services were terminated and therefore, Industrial Dispute is raised.

3. Parties appeared and filed Claim Statement and Counter respectively.

4. The case of the first party in brief is as follows :

5. The first party was working in the Railway Administration as APS Khalasi at Hospet.

6. It is the further case of the workman that he was suffering from mental depression and he was taking treatment at Bangalore upto 6-7-1987 and on his becoming fit for duty he submitted his joining report to the Second Party and there was no response to give him work. He had put in more than 20 years service when he was removed from service in the year 1986. The action of the management is not correct. The removal order passed by the management is not correct.

7. It is the further case of the workman that in the year 1987 he was granted APS Scale and he was not a temporary workman at all.

8. It is the further case of the workman that by that time he was put in more than 18 years of service. The Second Party has not sent any show cause notice to the first party. Therefore, the action of the management is not correct. Due to mental depression he was forced to remain absent. He had produced medical certificates. He is entitled for reinstatement. First party for these reasons and for some other reasons has prayed to pass award in his favour.

9. The case of the Second Party in brief is as follows :

10. This Tribunal has no jurisdiction to entertain this application. All the allegations of the workman are incorrect. In fact he remained absent from 7.10.1979 till his termination. The allegation that he was taking treatment at Bangalore upto 6-7-1987 is false. He has not approached the D.P.O of Guntakal on 9-5-1986 requesting for a job and this shows that inspite of his good health he voluntarily remained absent. The allegation that he had put in or about 20/18 years of service is not correct. He was a temporary monthly rated employee and he was remained unauthorized absent. The removal of first party is not illegal as per Rule 732 of Indian Railways Establishment Code and he is not entitled for reinstatement and any back wages. Second Party for these reasons and for some other reasons has prayed to reject the reference.

11. It is seen from the records that earlier this Tribunal by its order dated 30 October, 1992 rejected the reference. It appears the workman has filed miscellaneous application and that that was also dismissed by this Tribunal. Thereafter the workman filed Writ Petition before the High Court of Karnataka and the Writ Petition No. 225/1999 filed by the workman was allowed and the matter was remanded to this Tribunal. After giving opportunity to the workman he adduced evidence.

12. In the instant case MW1, Narasimha Rao, Sr. Clerk of the Management was examined. The Management filed certain documents. Workman filed his affidavit evidence and he is cross examined. Again management examined Narasimha Rao by filing affidavit. Workman has also filed document. After the close of the evidence I have heard both sides in detail. The learned Counsel for the workman has filed Written Argument and has relied some decisions.

13. I have read the written arguments of the workman and the decisions relied by the workman. I have carefully perused the entire records.

14. MW 1, Mr. Narasimha Rao has clearly admitted in his cross examination that the workman was given temporary status. Ex. M1 is the list of casual labourers. The name of the workman is in Srl.No. 48. This is submitted by the workman. It is stated by MW1 in his cross examination that the workman was given temporary status. His service register was maintained. All this would go to show that the workman has worked for a long period continuously and he was given temporary status. It is in evidence that the workman was given railway pass and other benefits. All this would go to show that the workman was initially appointed as Casual Labour and thereafter temporary status was given to him.

15. The contention of the management that no show cause notice is necessary and he can be terminated without any notice etc. does not hold good. Ex. M2 is the service register of the workman. It is in evidence that for more than a decade he has worked with the Second Party Management.

16. I have read the decision relied by the workman reported in AIR 1988 SC 1291. In view of the principles held in the above decision and the fact that the workman has worked for more than a decade would go to show that the management is not justified in removing him from service.

17. According to the material before us it is in evidence that the workman remained absent for a long period and as per the Rule 732 of Indian Railway Establishment Code, Vol.1 the first party remained absent unauthorized and he is deemed to be resigned from service.

18. Regarding absence the workman has also admitted that he was absent for a long period and he has not attended duty on account of his ill health. The workman being a Railway servant has to report to the Railway Hospital but all that is not done by the workman. The documents in this regard namely Ex.W1 and W8 are not helpful to the workman. He himself admits that he remained absent for a long period. His only contention is that he was not well and he was mentally depressed. He remained unauthorizedly absent for a long period.

19. I have read the decision relied by the workman reported in AIR 1986 SC Page 1571.

20. In the instant case it is also clear that the workman is more than 60 years old. The contention of the workman himself is that reinstatement does not arise in this case. Considering the fact that the workman has worked for more than a decade and was given temporary status, he is entitled for monetary benefits till he remained absent from duty as per records.

21. Considering all this I am of the opinion that this is a fit case to invoke the Provisions of Section 11A of the I.D. Act and to take some lenient view for giving monetary benefits to the workman for the period for which he has continuously worked as per the records of the Railway Administration and if he is entitled for any benefits the same can be paid as per rules.

22. It is clear from the records that the absence was unauthorized one and the workman has failed to produce the medical certificates from the Railway hospitals and therefore, for that period he is not entitled for any monetary benefits. Accordingly I proceed to pass the following Order :

ORDER

The reference is partly allowed. The workman is entitled for monetary benefits as per the service conditions for the period of his joining duty till he remained unauthorized absent. The management is directed to consider the case of the workman. Accordingly the reference is disposed off.

(Dictated to PA transcribed by her corrected and signed by me on 23rd December, 2002)

V.N. KULKARNI, Presding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 431.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ मैसूर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलौर के पंचाट (संदर्भ संख्या सी. आर. सं. 9/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6/1/2003 को प्राप्त हुआ था।

[सं. एल-12011/40/2000-आई. आर. (बी.-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 7th January, 2003

S.O. 431.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (C.R. No.9/2001) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Mysore and their workman, which was received by the Central Government on 06/01/2003.

[No. L-12011/40/2000-IR(B-1)]

AJAY KUMAR, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOURE COURT

"SHRAM SADAN",

III MAIN, III CROSS, II PHASE, TUMKUR ROAD, YESHWANTHPUR, BANGALORE

Dated : 30th December, 2002

PRESENT :

HON'BLE SHRI V. N. KULKARNI, B.COM, LLB

Presiding Officer
CGIT-CUM-LABOUR COURT,
BANGALORE.
C.R. No. 9/2001

I PARTY	**II PARTY**
The General Secretary, State Bank of Mysore Employees Association, (R) 641, 22nd Main Road, 4th 'T' Block, Jayanagar, BANGALORE-560041	The Managing Director, State Bamk of Mysore, Head Office, K.G. Road, BANGALORE-560 009

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12011/40/IR (B-1) dated 30th January, 2001 for adjudication on the following schedule:

SCHEDULE

"Whether the claim of the State Bank of Mysore Employees Association for the payment of hill and fuel allowance to the workman employed at the Kanathur Branch of M/s. State Bank of Mysore is justified? If yes, what relief the workmen are entitled to?"

2. The first party was working with the Management. The management has not paid the Hill and Fuel Allowance to the workman employed at Kanathur Branch of the Second Party and therefore, Industrial Dispute is raised.

3. Parties appeared and filed Claim Statement Counter respectively.

4. The case of the first party in brief is as follows:

5. The case of the workman is that while working as Head Cashier at Kanathur Branch of State Bank of Mysore, during the period from 10.9.1990 till date of his Retirement on 31.3.2001 under State Bank of Mysore Voluntary Retirement Scheme, has repeatedly requested State Bank of Mysore for payment of Hill and Fuel Allowance to him as per the provisions of the Bipartite Settlement.

6. It is the further case of the workman that Kanathur a village in Alur Taluk of Hassan District is situated at height of 954 metres above the Mean Sea Level and as per Bipartite Settlement and as per provisions of Manual of Staff Matters of State Bank of Mysore Hill and Fuel Allowance shall be payble at placed which have a height of not less than 750 metres Mean Sea Level and which are surrounded and accessible only through hills with the height of 1000 metres and above Mean Sea Level and at places situated at a height 1000 metre and above but less than 1500 metres. The place Kanathur satisfies both the above criteria i.e. it is situated at a height above 750 metres Mean Sea Level and also it is surrounded and accessible only through the places which are all above the height of 1000 metres from the mean Sea Level.

7. Number of documentary evidence like the certificate issued by the Survey of India, Southern Circle, Bangalore, Revenue Authorities of Alur Talk etc. are filed but the management has failed to pay Hill and Fuel Allowance. Therefore, the workman has prayed to pass award in his favour.

8. Against this the case of the Management in brief is as follows:—

9. It is alleged by the management that as per Bipartite Settelment dated 10.4.1989 clearly provides in paragraph 15 for payment of hill and Fuel Allowance in respect of three categories of places where the employees are working is provided and the places situated at a height of 3000 metres and above, a height of 1500 metres but below 3000 metres and a height of over 1000 metres but less than 1500 metres and Mercara Town. Therefore the case of the workman is not correct.The fourth category is covered by paragraph 15(b), which provides for payment of the allowance in respect of places which have a height of less than 750 metres and which are surrounded and accessible only through hills with a height of 1000 metres and above. No allowance is payable in respect of places which fall outside the four categories of places. The workman has not fulfilled the criteria and therefore he is not entitled for the allowance.

10. It is the further case of the management that Kanathur is situated at an altitude of 954 metres above Mean Sea Level and is accessible through Hassan, Alur and Sakaleshpur which are all located at an altitude of 940, 970 and 915 metres above the mean Sea Level and as such the second condition stiplated in clause 15(b) is not satisfied in the instant case and the workman is not entitle for any allowances.

11. It is the further case of the management that with reference of Clause 15(c) of the Bipartite Settlement dated 10.4.1989 in para 3 of the Counter Statement is only a typographical error when in fact the applicable clause is Clause 15(b) under which no Hill and Fuel Allowance is payble to the workman. The allegations made in the rejoinder are not correct. Management for these reasons any for some other reasons has prayed to reject the reference.

12. It is seen from the records that the workman has also filed rejoinder contending that Kanathur Village is situated at a height of 954 metres above the Mean Sea Level but the workman is entitled for allowance because the said village is surrounded and accessible only through places which are above 1000 metres from the Mean Sea Level. The allegations made in the counter are not correct. From Saklespur to Kanathur the road passes through Ballupet to reach Kanathur. Ballupet is situated a height of 1030 metres above Mean Sea Level. From Belur to Kanathur a road passes through Bikkodu to reach Kanathur. Bikkodu is situated at a height of 1020 metres above Mean Sea Level.

13. It is furhter case of the workman that these facts are supported by certificates filed by the workman and those certificates are issued by the competent authorities. Clause 15(c) has no relevance to the claim made by the first party. Clause 15 (b) applies and therefore the workman is entitled for allowance.

14. It is seen from the records that both sides have not adduced any oral evidence. Documents Ex.M1 to Ex. M5 are marked by the Management and Ex.W1 to W3 are marked by the workman.Thereafter I have heard the arguments of both the parties. Both the parties have filed Written Arguments. I have carefully considered the material before me and the documents marked by the parties. I have gone through the Written Arguments.

15. In the instant case the workman while working with the management has claimed Hill and Fuel Allowance. For determining the quantum of Hill and Fuel Allowances, the Hilly Region was categorized into three regions i.e. places situated at a height of 3000 metres & above the Mean Sea Level, places situated at a height of above 1500 metres but below 3000 metres above the Mean Sea Level and places situated at a

height of over 1000 metres but less than 1500 metres above the Mean Sea Level. Hill and Fuel Allowance is being paid to the employees working at places situated in the above regions at different rates as provided for in Clause 15(a) of the V Bipartite Settlement.

16. I have carefully considered the Bipartite Settlement. According to the Bipartite Settlement there is one more category of hilly region i.e. places situated at a height of less than 1000 metres but not less than 750 metres and are surrounded and accessible only through hills with a height of 1000 metres and above the Mean Sea Level. From this it is clear that employees working at branches situated at this category of hilly region, Hill and Fuel Allowance are eligible under Clause 15(b) of the Bipartite Settlement. The Clause 15(c) of the Bipartite Settlement is highly unfair and is totally against the interest of justice. Kanathur Branch of State Bank of Mysore which is situated at a height of 954 metres above Mean Sea Level and which is accessible only through hilly places which are all above 1000 metres of the Mean Sea Level. Kanathur Branch completely satisfies the stipulations made in Clause 15(b) of the Bipartite Settlement for being eligible for payment of hill and Fuel Allowance to the employees working there at.

17. Ex.M5 is the Bipartite Settlement. Clause 15 is in respect of Hill and Fuel Allowance. For the sake of convenience let me reproduce Clause 15 (a,b & c):

(a) The Hill and Fuel Allowance shall be payable as per the following revised rates:

(i) At placed situated at a height 3000 metres and above : 18% of pay Max. Rs. 450/-

(ii) At placed situated at a height 3000 metres and above : 18% of pay Max. Rs. 450/-

(iii) At placed situated at a height of and over 1000 metres but less than 1500 metres and Mercara Town. : 8% of pay Max. Rs. 150/-

(b) At places which have a height of not less than 750 metres and which are surrounded and accessible only through hills with a height of 1000 metres and above the hill and Fuel Allowance shall be paid as is payable at places situated at a height of 1000 metres and above but less than 1500 metres.

(c) Hill and Fuel Allowance paid at any place not covered by (a) (i), (ii), (iii) & (b) as above in terms of existing provisions, decisions, orders, bank level/local settlements or practices shall cease to be payable with effect from the date of this settlement irrespective of the reasones for or name by which it is now paid.

The employees all such places presently in receipt of such an allowance, however, shall continue to draw the then allowance as was drawn by them with their March, 1989 salary by way of a fixed Personal Allowance so long they are posted at that place as workmen employees.

18. On plain reading of the above clause it is clear that places which have a height of not less than 750 metres and which are surrounded and accessible only through hills with a height of 1000 metres and above the Hill and Fuel Allowance shall be payable at places situated at a height of 1000 metres i.e. 6% of pay or maximum of Rs. 100/- which ever is less.

19. Now we are having documents Ex. W1, W2 and W3. These documents are the copies given by the competent authorities namely Tahasildar and office of the Director of Surveyor. According to these documents it is clear that Kanathur village though it is below 1000 metres but surrounded and accessible only through hills with a height of 1000 metres and therefore, Hill and Fuel Allowance has to be paid to the workman working at Kanathur.

20. There is no merit in the arguments submitted by the management that Kanathur is reachable through Hassan, Alur and Sakleshpur and as such Kanathur does not satisfy the second requirement of the said Clause 15(b) of Ex. M:5 . The management has adduced any evidence to show that Kanathur is accessible through places, which are located at not less than 1000 metres. But according to the document Ex. W1 to W3 it is clear that Kanathur village though it is below 1000 metres but surrounded and accessible only through hills with a height of 1000 metres.

21. I have considered the entire material before me very carefully and I am of the opinion that according to the documents and the Bipartite Settlement the workman is entitled for Hill and Fuel Allowance at 6 per cent of pay or maximum amount of Rs. 100/- whichever is less.

22. Accordingly I proceed to pass the following Order :

ORDER

The reference is allowed and the management is directed to pay Hill and Fuel Allowance to workman for the period for which he worked at Kanathur at 6 per cent or maximum of Rs. 100/- whichever is less.

(Dictated to PA transcribed by her corrected and signed by me on 30th December 2002.

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2003

का. आ. 432.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मरुधर क्षेत्रीय ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण बीकानेर के पंचाट (संदर्भ संख्या सी.जी.आई. टी. 2/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2003 को प्राप्त हुआ था।

[सं. एल-12012/181/95-आई. आर.(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 7th January, 2003

S.O. 432.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (C.G.I.T. No. 2/96) of the Industrial Tribunal Bikaner, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Marudhar Kshetriya Grameen Bank and their workman, which was received by the Central Government on 6-1-2003

[No. L-12012/181/95-IR(B.1)]

AJAY KUMAR, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण, बीकानेर

नं०मु० केन्द्रीय औद्यो. वि. प्रसंग सं० 2 सन् 1996

श्री मदनलाल पुत्र रुपाराम शर्मा निवासी सरदारशहर लिपिक/कैशियर—मरुधर क्षेत्रीय ग्रामीण बैंक वर्तमान पद स्थापन अड़सीसर तहसील सरदारशहर जिला चुरू जरिये राजस्थान ग्रामीण बैंक इम्पलाईज यूनियन चूरू एवम् श्री भारतभूषण आर्य—महामंत्री बीकानेर डिवीजन ट्रेड यूनियन काऊन्सिल, 1, खजांची बिल्डिंग, बीकानेर (राजस्थान)

—प्रार्थीगण

विरुद्ध

अध्यक्ष, मरुधर क्षेत्रीय ग्रामीण बैंक, खेमकां भवन, स्टेशन रोड, चूरू (राज.)

—अप्रार्थी/नियोजक

प्रसंग अन्तर्गत धारा 10(1)(घ), औद्योगिक विवाद अधिनियम, 1947

न्यायाधीश—श्री के.एल. माथुर, आर.एच.जे.एस.

उपस्थिति :

(1) श्री भारतभूषण आर्य, श्रमिक प्रतिनिधि, प्रार्थी पक्ष के लिये

(2) श्री हरेन्द्र कुमार महोबिया, अप्रार्थी नियोजक के लिये

अधिनिर्णय

दिनांक 12 सितम्बर, 2002

श्रम मंत्रालय, भारत सरकार ने औद्योगिक विवाद अधिनियम, 1947 (जिसे आगे चलकर केवल अधिनियम कहा जावेगा) की धारा 10 की उपधारा (1) के खण्ड (घ) के अधीन जारी अधिसूचना क्रमांक एल-12012/181/95, दिनांक 2-12-96 के द्वारा प्रेषित इस प्रसंग के अन्तर्गत निम्न विवाद अधिनिर्णयार्थ इस अधिकरण में भेजा था :

> "क्या श्री मदनलाल शर्मा, रोकड़िया/लिपिक को अध्यक्ष एवम् अनुशासनात्मक प्राधिकारी के आदेश दिनांक 6-4-92 के द्वारा दण्ड दिया जाना एवम् 6 माह तक पदोन्नति नहीं दिया जाना उचित एवं वैध है ? यदि नहीं तो श्रमिक किस राहत का अधिकारी है ?"

2. प्रसंग प्राप्त होने पर प्रकरण दर्ज रजिस्टर किया गया, दोनों पक्षकारों द्वारा अपने-अपने लिखित अभिवचन पेश किये गये हैं अर्थात् प्रार्थी श्रमिक मदनलाल की ओर से प्रस्तुत क्लेम विवरण का जवाब अप्रार्थी नियोजक पक्ष द्वारा दिया गया है। न्यायालय की अनुमति से नियोजक पक्ष ने संशोधित जवाब क्लेम भी पेश किया है।

3. अप्रार्थी कर्मचारी मदनलाल (जिसे आगे चलकर केवल प्रार्थी श्रमिक कहा जावेगा) एवम् उसकी यूनियन की ओर से प्रस्तुत क्लेम विवरण में अंकित तथ्य संक्षेप में इस प्रकार है कि प्रार्थी श्रमिक की प्रथम नियुक्ति दिनांक 7-10-82 को कनिष्ठ लिपिक-कम-रोकड़िया के पद पर शाखा कार्यालय ब्रांच जिला चूरू में हुई थी और वर्तमान में उसका पदस्थापन अड़सीसर तहसील सरदारशहर में है, नियुक्ति के अनुसार प्रार्थी एक स्थाई व नियमित बैंक कर्मचारी है और उसकी सेवा में कोई व्यवधान नहीं है। प्रार्थी को एक आरोपपत्र दिनांक 1-10-1988 को दिया गया जिसका प्रार्थी श्रमिक ने समय पर 19-10-88 को उत्तर पेश कर दिया और आरोप से इन्कार करते हुए जांच की मांग की जिसे संतोषजनक न मानकर विभागीय जांच करने हेतु जांच अधिकारी नियुक्त किया गया और प्रार्थी को 16-4-88 से निलंबित किया गया था। जांच अधिकारी ने कोई विधिवत जांच नहीं की और जांच प्रक्रिया को नहीं अपनाया और कोई साक्ष्य नहीं ली और प्रार्थी को आरोप सम्बन्धी पत्रावली का अवलोकन नहीं कराया और न ही सम्बन्धित दस्तावेजात प्रतियां ही दी और किसी भी साक्षी से बयान के समय जिरह करने का अवसर नहीं दिया गया, इस प्रकार से जांच की समस्त कार्यवाही एकतरफा व मनमानी करके जांच अधिकारी ने अपना प्रतिवेदन प्रस्तुत किया जिस पर अनुशासन अधिकारी ने सजा दे दी जिसमें उसका निलंबन काल का वेतन जब्त कर लिया तथा पदोन्नति दो वर्ष के लिये रोक दी जो अवैध है और यह आदेश दिनांक 6-4-92 निरस्त करने योग्य है। अप्रार्थी ने प्रार्थी की पदोन्नति जो सर्वप्रथम कनिष्ठ लिपिक से वरिष्ठ लिपिक के पद पर नहीं की और उक्त आरोपपत्र के आधार पर पदोन्नति का परिणाम रोक दिया और दिनांक 18-8-88 से उसे वरिष्ठ लिपिक के पद पर पदोन्नत नहीं किया अपितु उससे कनिष्ठ 30 कर्मचारियों को पदोन्नत कर दिया, क्लेम विवरण के संलग्न सूची पत्र—"अ" में क्रमांक 5 से 34 तक सभी कर्मचारी उससे कनिष्ठ हैं इसके बाद अप्रार्थी ने गलत एवम् अनुचित रूप से पुनः दो बार दिनांक 1-10-1989 व 12-10-1990 को वरिष्ठ लिपिक से बैंक अधिकारी पद पर पदोन्नतियां दे दीं तथा प्रार्थी को उस लाभ से वंचित कर दिया व कोई भी पदोन्नति नहीं दी, पदोन्नत कनिष्ठ कर्मचारियों के नाम संलग्न सूची "ब" में दिये गये हैं। प्रार्थी पक्ष के अनुसार अप्रार्थी ने एक साधारण आरोप स्थापित करके बिना विधिवत जांच किये व बिना कोई अवसर दिये ही गलत सजात्मक आदेश

6-4-92 को पारित करके प्रार्थी को भयंकर हानि एवम् अनुचित सेवा सम्बन्धी व्यवहार करके तीन-तीन सजाएं एक साथ देकर अनुचित एवम् अवैध कार्य किया है जो आदेश निरस्तनीय है। बैंक के नियमानुसार कोई भी कनिष्ठ लिपिक निरन्तर 6 वर्ष के सेवाकाल के बाद बैंक आफिसर के पद पर पदोन्नति प्राप्त करने का हकदार होता है इसलिये प्रार्थी भी दिनांक 1-10-89 से इस पद पर पदोन्नति पाने का अधिकारी है, अनुशासन अधिकारी के आदेश दिनांक 6-4-92 के विरुद्ध निदेशक मण्डल को दिनांक 1-5-92 को अपील पेश कर दी थी जिस पर भी बिना सुनवाई के पक्षपात करके पूर्व आदेश व सजा को बहाल रख दिया और 1-1-93 को निर्णय कर दिया तथा निलम्बन काल का वेतन जब्त रखते हुए पदोन्नति न देने की सजा को दो साल से घटाकर 6 माह कर दी परन्तु अप्रार्थी ने उक्त निर्णय को भी नहीं माना और आज तक उसको पदोन्नति नहीं दी है। सजा के बाबत उसे कोई कारण बताओ नोटिस नहीं दिया जो विधिवत आवश्यक था, अप्रार्थी ने नियम राष्ट्रीय कृषि एवं ग्रामीण विकास बैंक की निर्देशिका संख्या आई.डी.डी.अ.आर. आर. बी सं. सी ''174-367-86-87'' सन्दर्भ क्षेत्रीय ग्रामीण बैंकों में अनुशासनिक कार्यवाही के लिये अपनाई जाने वाली प्रक्रिया के मार्ग निर्देश का पैरा 20 व 21 का उल्लंघन किया है। अंत में क्लेम स्वीकार करते हुए अप्रार्थी का आदेश दिनांक 6-4-92 व अपील अधिकारी का निर्णय 1-1-93 निरस्त किये जाने एवम् 16-7-88 से वरिष्ठ लिपिक के पद पर पदोन्नति तथा 1-10-89 से बैंक अधिकारी के पद व वेतनमान में पदोन्नति करने व तदनुसार समस्त वेतन एरियर राशि का भुगतान करने व निलंबन काल का जब्त वेतन (अवधि 16-4-88 से 6-4-92 तक) मय ब्याज भी दिलाये जाने की प्रार्थना की है।

4. प्रार्थी श्रमिक मदनलाल की ओर से प्रस्तुत क्लेम विवरण का जबाव अप्रार्थी नियोजक पक्ष ने इस अधिकरण में दिनांक 27-9-97 को प्रस्तुत कर दिया था जिसे बाद में अधिकरण की अनुमति से संशोधित करते हुए संशोधित जबाव क्लेम दिनांक 13-7-99 को प्रस्तुत किया गया है जिसमें अप्रार्थी नियोजक पक्ष ने क्लेम का प्रतिवाद करते हुए अंकित किया है कि प्रार्थी व उसके प्रतिनिधि ने जांच में भाग लिया था और जांच वैध तरीके से की गयी थी और अनुशासन अधिकारी ने भी पूरी जांच रिपोर्ट पर अपना माईण्ड एप्लाई करके ही प्रार्थी को सजा दी थी, उसके विरुद्ध की गई जांच व पारित आदेश विधि सम्मत है जो वैध है। सूचियां ''अ'' व ''ब'' अप्रार्थी को नहीं दी गयी है जो दिलवाई जावे जिनके सम्बन्ध में अप्रार्थी अपना जबाव देने का अधिकार सुरक्षित रखता है। अप्रार्थी का यह भी जबाव है कि 6 वर्ष पूरे होने पर कोई भी पदोन्नति अपने आप नहीं होती है मात्र पात्रता हो सकती है, पदोन्नति की प्रक्रिया है और उसे पूरी करने व योग्य पाये जाने पर ही पदोन्नति होती है। प्रार्थी की अपील पर पूरा विचार किया गया है, उस पर आरोप प्रमाणित थे उसके प्रति नरमी रखते हुए अपील में सजा कम कर दी गयी, सजा की अवधि समाप्त होने पर पदोन्नति अपने आप नहीं होती है और प्रार्थी के साथ कोई भेदभाव नहीं किया जा रहा है। अप्रार्थी ने किसी कानून का उल्लंघन नहीं किया है, कोई अनुचित श्रम व्यवहार नहीं किया गया है ना ही कोई अनुचित एवम् अवैध कार्यवाही की गयी है। अतिरिक्त आपत्तियों में यह भी अंकित किया गया है कि प्रार्थी ने इस तथ्य को छुपाया है कि उसने इसी अनुतोष को पाने के लिये राजस्थान उच्च न्यायालय में याचिका एस.बी. रिट पेटीशन नं. 2412/91 प्रस्तुत की थी जो स्वयं उसने विदड्रा करली, प्राथी का पक्ष कमजोर था इसलिये उसने रिट विदड्रा की थी अत: अब उसी बिन्दू पर वह इस अधिकरण के समक्ष विवाद उठाने से एस्टापड है और एस्टापल का सिद्धान्त लागू है, रिट याचिका विद्ड्रा करने के प्रार्थनापत्र में न तो इस न्यायालय के समक्ष विवाद उठाने की इजाजत मांगी थी और न ही न्यायालय ने इजाजत दी इसलिये प्रांगन्याय का सिद्धान्त लागू है और यह विवाद चलने योग्य नहीं है। स्टेटमेंट ऑफ क्लेम न तो सक्षम व्यक्ति द्वारा हस्ताक्षरित व प्रस्तुत है इसलिये पढ़े जाने योग्य नहीं है और कोई विवाद नहीं होने योग्य है। प्रार्थी प्रसंग से भिन्न अनुतोष चाह रहा है, प्रार्थी ने पदोन्नतियों की मांग अधिकार के रूप में की है पदोन्नति अधिकार नहीं है और विशिष्ट अभिवचन के अभाव में क्लेम पढ़ने योग्य नहीं है। श्रमिक के पदोन्नति के प्रयोजनार्थ एक पद फील्ड सुपरवाईजर का रिक्त रखा गया था परन्तु राष्ट्रीय औद्योगिक ट्रिब्युनल ने अपने फैसले दिनांक 30-4-90 द्वारा 1-9-87 से सुपरवाईजर का पद समाप्त कर दिया है इसलिये श्रमिक को पदोन्नति करने हेतु कोई पद न होने से श्रमिक कोई अनुतोष प्राप्त करने का अधिकारी नहीं है विवाद निष्फल हो चुका है। श्री मदनलाल ने दिनांक 17-12-92 को गलती स्वीकार करते हुए पुनरावृत्ति नहीं करने का संकल्प लिया था अब वह आरोप का प्रतिरोध करने से एस्टापड है और आरोप स्वीकार करने के बाद दण्ड दिया जा चुका है अत: प्रार्थी का क्लेम हर्जा खर्चा सहित खारिज करने की प्रार्थना की गयी है।

5. पक्षकारों ने अपने-अपने पक्ष समर्थन में साक्ष्य भी पेश की है, प्रार्थी पक्ष की साक्ष्य में स्वयं श्रमिक मदनलाल शर्मा ने अपना शपथपत्र पेश किया है जिसके खण्डन में अप्रार्थी पक्ष की साक्ष्य में कैलाश चन्द्र शर्मा का शपथपत्र प्रस्तुत हुआ है। दोनों पक्षों ने एक-दूसरे पक्ष के साक्षी से जिरह की और प्रलेखीय साक्ष्य पेश की है।

6. बहस सुनी गयी और पत्रावली का अवलोकन किया गया। हमारे समक्ष लंबित इस प्रसंग के निस्तारण के लिये प्रमुख रूप से विचारणीय प्रश्न यही है कि क्या श्रमिक श्री मदनलाल शर्मा रोकडिया/लिपिक को अध्यक्ष एवम् अनुशासनात्मक प्राधिकारी के आदेश दिनांक 6-4-92 के द्वारा दण्ड दिया जाना एवं 6 माह तक पदोन्नति नहीं दिया जाना उचित एवम् वैध है ? यदि नहीं तो श्रमिक किस राहत का अधिकारी है ?''

इस विचारणीय बिन्दू को सिद्ध करने का भार प्रार्थी पक्ष पर ही था।

7. इस सम्बन्ध में प्रार्थी श्रमिक ने अपने शपथपत्र में क्लेम के तथ्यों की पुनरावर्ती करते हुए अपनी नियुक्ति प्रदर्श डब्ल्यू-1 के द्वारा 7-10-82 को होना एवम् अप्रार्थी बैंक द्वारा 1-10-88 को आरोपपत्र प्रदर्श डब्ल्यू 2 दिया जाना एवम् आरोपों से इन्कार करते हुए 19-10-88 को जबाव प्रदर्श डब्लू. 3 दिया जाना बताया और प्रदर्श डब्ल्यू 4 के द्वारा प्रार्थी को 16-4-88 के द्वारा जाँच पूरी होने तक निलंबित करना बतलाया। प्रार्थी के अनुसार उपरोक्त आरोप पर उसके विरुद्ध विधिवत जाँच नहीं हुई, किसी गवाह के बयान नहीं हुए, प्रार्थी के किसी गवाह के बयान नहीं लिये, गवाहों से जिरह नहीं करने दी गयी, प्रार्थी को पत्रावली का निरीक्षण करने एवम् दस्तावेजात की प्रतिलिपियां लेने की अनुमति नहीं

दी गयी एवम् सम्पूर्ण जाँच विधि विरुद्ध प्रक्रिया से करते हुए जाँच प्रतिवेदन पेश कर दिया और जाँच में प्रथम आरोप को प्रमाणित माना एवम् आरोप सं. 2 को सही नहीं मानते हुए खारिज कर दिया जो रिपोर्ट प्रदर्श डब्ल्यू. 5 है। जाँच अधिकारी ने किसी भी प्रक्रिया व नियम की पालना नहीं की थी एवम् गलत रिपोर्ट प्रस्तुत की जिसके आधार पर अप्रार्थी ने प्रार्थी को सजा का आदेश प्रदर्श डब्ल्यू 6 व 7 पारित किया एवम् प्रार्थी को निलंबन काल का वेतन जब्त करने एवम् दो वर्ष तक पूर्व में देय कोई भी पदोन्नति नहीं दिये जाने का आदेश दिया, प्रार्थी को सजा देते समय आरोप सं. 1 को गलत आधार पर प्रमाणित माना है क्योंकि इस आरोप प्रार्थी को तत्कालीन शाखा प्रबन्धक मीणा के साथ गलत कार्यों में सम्मिलित होना माना है जबकि इस सम्बन्ध में दिनांक 6-4-92 तक श्री मीणा के विरुद्ध जाँच पूर्ण नहीं हुई, श्री मीणा को दी गयी चार्जशीट प्रदर्श डब्ल्यू 8 एवम् दण्डादेश प्रदर्श डब्ल्यू 9 है इससे स्पष्ट होता है कि प्रार्थी को दोषी मानते समय श्री मीणा के विरुद्ध जाँच पूरी नहीं हुई थी। बैंक ने यह मानते हुए कि बैंक का समस्त कार्यभार प्रार्थी के पास था और प्रार्थी ने बिना अवकाश लिये व बिना काम संभलाये चला गया जबकि वास्तव में प्रार्थी के पास कोई कार्यभार नहीं था बल्कि केवल बैंक की चाबियां व खोलने व बन्द करने का कार्यभार था जिनको प्रार्थी कार्यवाहक शाखा प्रबन्धक नवरतनलाल शर्मा को देकर चला गया था। इस विभागीय जाँच दिनांक 17-12-90 एवम् 27-12-90 की प्रतियाँ प्रदर्श डब्ल्यू 10 व 11 है। प्रार्थी ने जाँच के विरुद्ध बैंक के निर्देशक मण्डल को अपील प्रदर्श डब्ल्यू 12 पेश की थी जिसका निर्णय 1-1-93 को हुआ था और पूर्व में दी गयी सजा को घटाकर दो वर्ष को कम करके 6 माह तक पदोन्नति नहीं देने का आदेश दिया गया जो आदेश प्रदर्श डब्ल्यू 13 है। नियमानुसार एवम् अपील प्राधिकारी के निर्णय के अन्तर्गत प्रार्थी को दी गयी दोनों सजायें अर्थात् निलम्बन काल का वेतन जब्त करने और दो वर्ष तक पदोन्नत नहीं करना गैर कानूनी एवम् अवैध है। प्रार्थी ने 6 माह की अवधि पूरी होने पर पदोन्नति दिये जाने हेतु एक प्रार्थनापत्र 11-6-93 को पेश किया था जिस पर अप्रार्थी ने प्रदर्श डब्ल्यू 14 के द्वारा पदोन्नति दिये जाने से इन्कार कर दिया, प्रार्थी 18-8-88 से कनिष्ठ लिपिक से वरिष्ठ लिपिक पद पर पदोन्नति एवम् 28-11-89 से बैंक अधिकारी की पदोन्नति प्राप्त करने का अधिकारी है और इस सम्बन्ध में केवल मात्र आदेश जारी होने बाकी थे कि बाद में आरोप पत्र जारी होने पर यह पदोन्नति रोक दी गयी और प्रार्थी पदोन्नति से वंचित रहा। इस सम्बन्ध में बैंक का परिपत्र प्रदर्श डब्ल्यू 15 है। तथाकथित विभागीय जाँच एवम् आरोपपत्र के कारण प्रार्थी को कोई पदोन्नति नहीं दी गयी एवम् अप्रार्थी ने नियम विरुद्ध कार्य करके प्रार्थी से अति कनिष्ठ 30 कनिष्ठ लिपिकों को वरिष्ठ लिपिक के पद पर पदोन्नति प्रदान कर दी जिसकी सूची प्रदर्श डब्लयू. 16 है जिसमें क्रमांक 5 से 34 तक के कर्मचारी प्रार्थी से कनिष्ठ है एवम् इसी क्रम में प्रार्थी से अति कनिष्ठ 11 वरिष्ठ लिपिकों को बैंक अधिकारी के पद पर पदोन्नति देकर वरिष्ठ बना दिया जो सूची प्रदर्श डब्ल्यू. 17 है। राष्ट्रीय कृषि एवम् ग्रामीण विकास बैंक संस्थागत विकास विभाग बम्बई द्वारा जारी परिपत्र प्रदर्श डब्ल्यू.18 जिसकी प्रतिलिपि सभी बैंकों को दी गयी जिसके अन्तर्गत बैंक के कर्मचारियों के विरुद्ध अनुशासनिक कार्यवाही करने की प्रक्रिया दी गयी है, यह प्रक्रिया प्रार्थी के विवाद में नहीं अपनायी गयी। प्रार्थी इस विवाद में रेफरेंस आदेश के अन्तर्गत पूर्ण अनुतोष प्राप्त करने का अधिकारी है तथा समय पर नहीं दी गयी पदोन्नतियों एवं उससे कनिष्ठ कर्मचारियों को दी गयी पदोन्नती पूर्व तिथि व पूर्ण वेतन लाभ सहित पाने का अधिकारी है तथा वरिष्ठता सूची में उपयुक्त स्थान प्रार्थी को दिया जावे। गवाह ने प्रतिपरीक्षण में स्वीकार किया कि हमारे यहां प्रदर्श एम-1 नियम लागू हैं, मैं जांच की प्रत्येक पेशी पर उपस्थित था जिस पर मेरे हस्ताक्षर प्रदर्श एम-1-2 में हैं। मेरे को जांच की रिपोर्ट केवल मात्र निष्कर्ष एवं दण्डादेश ही मिले थे जो प्रदर्श-5 है जिसकी अपील प्रदर्श डब्ल्यू 12 एवम् अपील निर्णय प्रदर्श डब्ल्यू. 13 है। अंतिम वरिष्ठता सूची प्रदर्श डब्ल्यू. 13 है। यह कहना गलत है कि केन्द्रीय अधिकरण सुपरवाईजर का पद समाप्त कर दिया हो, वास्तव में सुपरवाईजर के पद को अधिकारी के पद में समायोजित कर दिया गया है परन्तु उसका आदेश मेरे पास नहीं है। प्रार्थी ने इस सुझाव को गलत बताया कि इसी विवाद को लेकर वह माननीय उच्च न्यायालय जोधपुर गया हो, रिट याचिका प्रदर्श एम-3 मैंने पेश की थी जो मैंने वापिस ले ली और उसका आदेश प्रदर्श एम-4 है। प्रदर्श एम-5 मैंने बैंक के कहने पर लिखकर दिया था, आरोपपत्र प्रदर्श एम-6 है। अनुशासिक कार्यवाही प्रारंभ होते समय मैं कनिष्ठ लिपिक पद पर था एवं परिणाम रोके जाने के कारण वरिष्ठ-लिपिक नहीं बन पाया। यह सही है कि मुझे मेरी सजा की अवधि समाप्त छः माह होने पर भी मैं वरिष्ठ-लिपिक या बैंक अधिकारी नहीं बना।

इसी सम्बन्ध में नियोजक की ओर से प्रस्तुत गवाह कैलाशचन्द्र शर्मा ने अपने शपथपत्र में बतलाया कि मदनलाल को आदेश प्रदर्श डब्ल्यू 4 के द्वारा 16-4-88 को निलंबित किया गया था तथा उन्हें 1-10-88 से आरोपपत्र प्रदर्श डब्ल्यू. 2 भी दिया गया था, पहले 20-2-89 को डी.डी. अग्रवाल को जांच अधिकारी नियुक्त किया गया था लेकिन प्रशासनिक कारणों से 27-4-89 को श्री डी.पी. कस्वां को जांच अधिकारी प्रदर्श एम-1 द्वारा नियुक्त किया गया। जिस पर श्री कस्वां ने दोनों पक्षों को सूचित किया और श्रमिक एवं उसके प्रतिनिधि की उपस्थिति में सारी जांच कार्यवाही की है, यह कहना गलत है कि श्रमिक या उसके प्रतिनिधि को पत्रावली के निरीक्षण से इंकार किया गया हो एवम् मदनलाल द्वारा प्रार्थनापत्र देने के बावजूद भी उसको प्रतिलिपियां नहीं दी गयी हो। जांच पत्रावली प्रदर्श एम-2 से स्पष्ट है कि प्रार्थी को मांगे गये दस्तावेज दिये गये थे और नैसर्गिक न्याय के सिद्धांतों की अवहेलना नहीं की गयी। जांच अधिकारी की रिर्पोट प्रदर्श एम-6 के अनुसार मदनलाल पर प्रथम आरोप प्रमाणित पाये जाने पर आदेश प्रदर्श एम-7 दिनांक 6-4-92 के द्वारा दो वर्ष तक उच्च पद पर पदोन्नती रोकने का दण्ड दिया और 16-4-88 से 6-4-92 तक की अवधि के लिये दिये गये निलम्बन भत्ते के अतिरिक्त अन्य प्रकार के भत्ते देय नहीं माने गये। अपील करने पर दण्ड 2 वर्ष की बजाय 6 माह के लिये प्रदर्श डब्ल्यू. 13 से कर दिया गया। प्रबन्धक श्री मीणा को भी दुराचरण का दोषी मानकर दण्ड दिया गया था तथा मदन लाल ने अपनी गलती स्वीकार करते हुए 17-12-92 को प्रदर्श एम-5 प्रार्थनापत्र दिया था, मदनलाल के पास बैंक की प्रबन्धकीय व कैश की दोनों चाबियाँ थी जिन्हें वह मना करने के बावजूद छोड़कर चला गया। पदोन्नति 6 माह के लिये रोकने का आदेश दिया गया था और विवाद इसी बिन्दू तक ही सीमित है। दिनांक 18-8-88 से कनिष्ठ लिपिक से वरिष्ठ लिपिक

बनाते समय मदनलाल निलंबित था और जांच के पश्चात् उसको दंडित करके पदोन्नत नहीं किया गया तथा फरवरी 1989 के बाद कोई पदोन्नति कनिष्ठ लिपिक से नहीं की गयी। दिनांक 30-4-90 को राष्ट्रीय औद्योगिक न्यायाधिकरण के पंचाट के अनुसरण में भारत सरकार के आदेश दिनांक 22-2-91 की पालना में 1-9-87 से वरिष्ठ लिपिक व क्षेत्रीय पर्यवेक्षक के अलग कैडर समाप्त कर दिया गया तथा वरिष्ठ व कनिष्ठ लिपिक का कैडर मात्र लिपिकीय रह गया। दिनांक 7-7-90 को हुई पदोन्नति में मदनलाल इसलिये पदोन्नति नहीं हो सका कि वह उस कैडर में नहीं था जिससे पदोन्नति की गयी थी और इसके बाद कोई पदोन्नती नहीं हुई। मदनलाल ने माननीय राजस्थान उच्च न्यायालय में याचिका प्रदर्श एम-3 में वही अनुतोष मांगा था जो इस न्यायालय में मांग रहा है तथा उसके द्वारा याचिका बिना किसी शर्त के वापिस ले ली गयी जिसका आदेश प्रदर्श एम-4 है और वह अब कोई अनुतोष प्राप्त करने का अधिकारी नहीं है। गवाह ने प्रतिपरीक्षण में बताया कि जांच में किन-किन गवाहों के बायान लिये गये मुझे पता नहीं और बयान पत्रावली में संलग्न है। राष्ट्रीय औद्योगिक अधिकरण के अवार्ड की पालना में 1-9-87 से वरिष्ठ लिपिक और क्षेत्रीय सुपरवाईजर के पद समाप्त कर दिये गये इसलिये अपील के निर्णय के बाद कर्मचारी को 6 माह बाद पदोन्नती नहीं दी गयी। प्रदर्श डब्ल्यू 16 में अंकित सभी कर्मचारियों को पदोन्नती दे दी गयी जिसमें क्रम सं. 1, 2, 3 मदनलाल से वरिष्ठ है और शेष कनिष्ठ है जिनको पदोन्नती दी गयी है।

मदनलाल 1-3-88 से 5-3-88 तक अवकाश पर रहा हो तो ध्यान नहीं है और उसके स्थान पर भरतलाल मीणा ने कार्य किया हो तो ध्यान नहीं है।

8. विद्वान पक्षकारों तक की बहस एवम् पत्रावली के अवलोकन से हम देखते है कि जहाँ तक प्रार्थी की अप्रार्थी के नियोजन में प्रदर्श डब्ल्यू.1 द्वारा नियुक्ति का प्रश्न है इस सम्बन्ध में कोई विवाद नहीं है। इस सम्बन्ध में भी कोई विवाद नहीं है कि मदनलाल को आरोपपत्र प्रदर्श डब्ल्यू. 2 दिया गया जिसका जवाब प्रदर्श डब्ल्यू. 3 मदनलाल द्वारा दिया गया तथा मदनलाल को प्रदर्श डब्ल्यू. 4 के द्वारा निलंबित किया गया और प्रदर्श डब्ल्यू. 5 के द्वारा जाँच अधिकारी ने अपने निष्कर्ष प्रस्तुत किये एवम् प्रदर्श डब्ल्यू. 6 एवम् 7 के द्वारा प्रार्थी को दंडित किया गया। इन सभी तथ्यों के सम्बन्ध में दोनों पक्षों में किसी प्रकार का कोई विवाद नहीं है। भरतलाल मीणा को अरोपपत्र प्रदर्श डब्ल्यू. 8 दिया एवम् इस सम्बन्ध में अंतिम आदेश प्रदर्श डब्ल्यू. 9 पारित किया गया। विभागीय जाँच की कार्यवाही प्रदर्श डब्ल्यू. 10 व 11 श्रमिक द्वारा प्रस्तुत को गई हैं, इसी सम्बन्ध में नियोजक द्वारा प्रस्तुत विभागीय जाँच कार्यवाही की पत्रावली प्रदर्श एम-2 के अवलोकन से पाया जाता है कि जाँच की सारी कार्यवाही श्रमिक की उपस्थिति में की गयी है एवम् श्रमिक को उसके द्वारा मांगे गये दस्तावेज अर्थात पूर्व जाँच की प्रतिलिपियां भी प्रदान की गयी हैं एवम् जाँच के पश्चात् श्रमिक के विरुद्ध मरूधर क्षेत्रीय ग्रामीण बैंक कर्मचारी वृन्द सेवा विनियम की धारा 17 के अन्तर्गत नियमों व आदेशों की अनुपालना नहीं करने का आरोप सही पाया गया एवम् शेष आरोप प्रमाणित नहीं हुए, तब श्रमिक को उपरोक्त अनुसार दण्ड दिया गया और प्रार्थी श्रमिक द्वारा प्रस्तुत की गयी अपील प्रदर्श डब्ल्यू. 12 की सुनवाई होने पर प्रदर्श डब्ल्यू. 13 द्वारा संशोधित करके प्रार्थी की पदोन्नति केवल 6 माह के लिये ही रोकी गयी, इस सम्बन्ध में आदेश प्रदर्श डब्ल्यू 14 भी पारित किया गया।

9. हमारे समक्ष विचारणीय प्रश्न यही है कि क्या श्रमिक की पदोन्नति 6 माह के लिये रोकना उचित एवम् वैध था इन हालात में प्रदर्श डब्ल्यू 15 के अनुसरण में प्रदर्श डब्ल्यू 16 द्वारा दी गयी पदोन्नतियों के औचित्य पर विचार करने का कोई भी कारण हमारे समक्ष नहीं है एवम् इन हालात में वरिष्ठता सूची प्रदर्श डब्ल्यू 17 के सम्बन्ध में भी इस अधिकरण को कोई विचार नहीं करना है। विभागीय जाँच में कर्मचारी के विरुद्ध आरोप प्रमाणित पाया गया एवम् श्रमिक द्वारा प्रस्तुत अपील प्रदर्श डब्ल्यू. 12 विचाराधीन रहते हुए ही प्रार्थी, द्वारा एक आरोप स्वीकारोक्ति पत्र प्रदर्श-5 नियोजक को दिया गया जिस पर विचार किया गया एवम् श्रमिक के विरुद्ध संशोधित दण्डादेश प्रदर्श डब्ल्यू 13 पारित किया गया। जाँच पत्रावली प्रदर्श एम-2 एवम् प्रार्थी श्रमिक की स्वीकारोक्ति प्रदर्श एम-5 से श्रमिक के विरुद्ध लगाया गया आरोप प्रमाणित होता है और श्रमिक को प्रदर्श डब्ल्यू 13 द्वारा दिया गया दण्ड भी अधिक नहीं है अत: प्रकरण के समस्त हालात को देखते हुए हम इस निकर्ष पर पहुँचते हैं कि प्रार्थी को 6 माह तक पदोन्नति नहीं दिये जाने का दण्ड किसी भी रूप में अनुचित एवम् अवैद्य नहीं है अत: श्रमिक कोई राहत व राशि प्राप्त करने का अधिकारी नहीं है। प्रदर्श डब्ल्यू 15 के अनुसरण में प्रदर्श डब्ल्यू 16 द्वारा दी गई पदोन्नति इस अधिकरण के विचार क्षेत्र से बाहर है अत: उन पर कोई विचार नहीं किया जा सकता क्योंकि इसका कोई उल्लेख प्रसंग में नहीं है।

10. अत: श्रम मंत्रालय, भारत सरकार द्वारा प्रेषित इस प्रसंग को उत्तरित करते हुए यह पंचाट इस प्रकार से पारित किया जाता है कि प्रार्थी श्रमिक श्री मदनलाल शर्मा, रोकड़ या/लिपिक को अध्यक्ष एवम् अनुशासनात्मक प्राधिकारी के आदेश द्वारा 6 माह तक पदोन्नति नहीं दिये जाने का दण्ड किसी भी रूप में अनुचित एवम् अवैध नहीं है अत: प्रार्थी श्रमिक कोई राहत एवं राशि प्राप्त करने का अधिकारी नहीं है।

उक्त अधिनिर्णय अधिनियम की धारा 17(1) के अन्तर्गत प्रकाशनार्थ भारत सरकार को भेजा जावे।

मुहर

11. आज्ञा आज दिनांक 12-9-2002 को विवृत न्यायालय में सुनाई गई।

के.एल. माथुर, न्यायाधीश

नई दिल्ली, 7 जनवरी, 2003

का. आ. 433.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, मुम्बई के पंचाट (संदर्भ संख्या सी.जो.आई. टी. 2/82/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2003 को प्राप्त हुआ था।

[सं. एल-12012/211/2000-आई. आर. (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 7th January, 2003

S.O. 433—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. C.G.I.T. No. 2/82/2000) of the Central Government Industrial Tribunal No. II Mumbai Now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 6-1-2003.

[No. L-12012/211/2000-IR(B.1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 11, MUMBAI

PRESENT

S. N. SAUNDANKAR

PRESIDING OFFICER

REFERENCE NO. CGIT-2/82 of 2000.

EMPLOYERS IN RELATION TO THE MANAGEMENT OF STATE BANK OF INDIA, GOA

The General Manager,
State Bank of India,
State Bank Bhavan,
Mahatma Gandhi Road,
Panaji Goa—403001

AND

THEIR WORKMEN

The Dy. General Secretary,
State Bank Karmachari Sena,
C/o. Sh. Uttam Yadav,
1, Ameya Kripa, Jondhli Bag,
Makhmali Talao, Old Agra Road,
Thane—400 601.

APPEARANCES

FOR THE EMPLOYER : Mr. Alok Das
Representative.

FOR THE WORKMEN : Mr. H.M Nabar
Representative.

Mumbai, dated the 4th December 2002

AWARD

The Government of India Ministry of Labour by its Order No.L-12012/211/2000/IR(B-I) dated 21-08-2000 in exercise of the powers conferred by clause (d) of section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of State Bank of India, Goa, in terminating the services of Shri Suresh Mahadeo Mahadik w.e.f. Jan. 1992 is justified? If not, what relief the workman is entitled?"

2. Shri Suresh Mahadeo Mahadik was appointed as temporary subordinate staff in State Bank of India, Dapoli Branch, The union i.e. State Bank Karmachari Sena vide Statement of Claim (Exhibit-13) pleaded that Mahadik worked continuously more than 240 days in Dapoli Branch however he was orally terminated in January'92. It is pleaded workman was empanelled in subordinate cadre which lapsed from 31-3-97. The union contended that workman since worked for more than 240 days, without complying the provisions of Section 25 F of the I.D. Act he has been terminated, therefore management bank be directed to reinstate him with full back wages.

3. Management State Bank of India resisted the claim of union by filing written Statement (Exhibit-14) contending that there is inordinate and unexplained delay in raising the dispute. The cause has been raised after about 8 years and that it being stale deserves to be dismissed. It is averred that Mahadik worked purely in casual daily wages, temporary capacity, intermittently without continuity in service due to the administrative exigencies as watchman, messenger, sweeper-cum-water man some time as full time and sometime worked as part of the day. It is contended that in view of the settlements since workman was in temporary service during 1983 to 1986 in response to the advertisement had applied and that he was interviewed and was empanelled, however panel prepared in pursuance of the settlement lapsed on 31-3-97 and therefore no person named in the same panel could be considered by the bank for the permanent absorption. It is pleaded that workman did not complete 240 days in the bank and he being a casual labour his discontinuance does not warrant Section 25 F of the Industrial Disputes Act, therefore workman is not entitled to any relief. Consequently bank prayed to dismiss the claim in limine.

4. On the basis of the pleadings issues were framed at Exhibit-21. Workman Mahadik filed affidavit in lieu of Examination-in-Chief (Exhibit-36) and union closed oral evidence vide purshis (Exhibit-37). In rebuttal Chief Manager Mr. Satardekar filed affidavit in lieu of Examination-in-Chief (Exhibit-40) and the management closed evidence vide purshis (Exhibit-42).

5. Union filed written submissions (Exhibit-44) with copies of rulings and the management (Exhibit-45/46) On hearing the Learned Representatives for both sides and perusing the record as a whole, the written submissions. I record my findings on the following issues for the reasons stated below :—

	Issues	*Findings*
1.	Whether the reference suffers from laches as averred in W.S.?	Yes.
2.	Weather Shri Suresh Mahadeo Mahadik proves that he had	Does not survive

	worked for more than 240 days in the bank?	
3.	Whether the Bank complied the provisions of Industrial Disputes Act before discontinuing Mr. Mahadik?	Does not Survive
4.	Whether the action of the Management of State Bank of India Goa in terminating the services of Shri Suresh Mahadeo Mahadik w.e.f. January 1992 is justified?	Yes.
5.	What relief Shri Mahadik is entitled to?	As per order below

REASONS

6. At the outset the Learned Representative for the management Bank submits that the Workman was admittedly discontinued in January'92. and that the reference is of the year 2000 i.e. after about eight years the cause was espoused. Inviting attention of this Tribunal to the reply (Ex-16) and the rulings filed with list (Exhibit-45) the representative for the management submits that unexplained inordinate delay of eight years being stale cannot be condoned and on this count the reference needs to be dismissed. On the other hand the Learned Representative for the union submits inviting attention to their application (Exhibit-15) that workman is of a weaker section and that object of the Act is to improve the service conditions of the Industrial Labour so as to provide them the ordinary amenities of life and by the process to bring about industrial peace which would on its term accelerate productivity activity of the county resulting in its prosperity. Therefore according to him delay does not come in the way of workman relying on the decision of the Apex Court in Ajaib Singh V/s. The Sirhind Co-operative Marketing cum-processing Service Society Ltd & Anr. 3T 1999 (3) SC 38 wherein Their Lordships observed:-

> "The Act was brought on the statute book with the object to ensure social justice to both the employers and employees and advance the progress of industry. It is a piece of legislation providing and regulating the service conditions of the workers."

In Hindustan Antibiotics Ltd. V/s. The Workman AIR 1967 SC 948 Their Lordships ruled:-

"The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. The provisions of the Act have to be interpreted in a manner which advances object of the legislature contemplated in the statement of objects and reasons. While interpreting different provisions of the Act, attempt should be made to avoid industrial . Unrest, secure industrial peace and to provide machinery to secure that end. By catena of Judgments recently Their Lordships of Supreme Court ruled that considering the facts and circumstances of the case in deserving matters delay needs to be condoned for substantial justice. In the case in hand, workman was admittedly discontinued in January'92. He is working as canteen boy in the canteen run by the Staff Welfare Committee from February, 92 till to date on the wages of Rs.1000/- per month . According to workman he had moved the A.L.C(C) for the first time in 1999. This shows that he expoused the cause of his discontinuance of January'92 in the year 1999. He could have moved the Bank and the AL.C. immediately when he admittedly works in the canteen run by the staff welfare committee. It is therefore apparent that he slept over his rights and that equity also does not help such persons as it helps to the persons who do equity. Their Lordships of Supreme Court in Bhoop Singh V/s. Union of India & Ors. (1992) 3 Supreme Court cases 136 observed :—

> "It is expected of a Government Servant who has a legitimate claim to approach the court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated causally. By collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact of the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This a material fact to be given due weight considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement. In our opinion the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason not to classify him with the other dismissed constables who approached the court earlier and got reinstatement"

Relying on the said decision in the light of the circumstances inordinate delay of eight years being intentional cannot be condoned and on this count, the reference being stale suffers from laches needs to be dismissed. Issue No.1 is therefore answered accordingly.

7. Assuming for a moment, reference is maintainable the question crops on whether the action of the management Bank in connection with workman is justified if looked on merits, does not stand. According to workman

he worked continuously and completed more than 240 days in twelve months preceding the calendar year i.e Jan '91 to Jan '92. He has filed letter of the Branch Manager dtd. 7/2/92 which mentions in the year 1991 he had worked 261, days and that Chief Manager who was working as Branch Manager in the material period at Dapoli also in cross-examination para 27 pointed out that workman worked continuously in the year 1991-1992. The Learned Representative for the workman submits that though Mahadik worked more than 240 days, without complying the provisions of Section 25 F of the Act he has been terminated which is illegal and unjustified, workman himself in his cross-examination admits that he was temporarily engaged in the bank, he was not interviewed nor he gave medical examination and that he was not given appointment letter by the bank. At this juncture, the Learned Representative for the management submits with force that Mahadik worked purely in casual/daily wages, temporary capacity intermittently due to exigencies of work in subordinate cadre and further submits that even if he worked more than 240 days in one year, not entitled to regularisation. Their Lordships in Delhi Development Horticulture Employees Union V/s. Delhi Administration, 1992(II)LLJ 452 ruled:—

> "Any person who has completed 240 days can not claim the regularisation, merely on such ground. Such regularisation jeopardise the larger public interest."

8. Workman was admittedly interviewed and empanelled in the subordinate cadre, as per the prevailing settlement however the panel list lapsed on 31-3-97. The Learned Representative for the management submits though the workman completed more than 240 days and was empanelled are not entitled for further appointment relying on the decision in Madhavrao V/s. State Bank of India and Ors. decided on 16-7-99 in SLP No. CC3083/1999, Since the panel list lapsed in 1997 the workman does not get right of absorption in view of the revised policy for which reliance can be had to Syndicate Bank and Ors. V/s. Sankar Paul and Ors., 1997 (6) SCC 584. So far workman completed more than 240 days Their Lordships of Supreme Court in Himanshukumar Vidrarthi V/s. State of Bihar, AIR 1997 SC 2650 ruled daily wage employee whose services were engaged on the basis of need of work, termination of such employee cannot be construed to be retrenchment. When the workman in view of the decision was not retrenched, provisions of Section 25 F of the Act are not applicable.

9. In Madhavrao V/s. State Bank of India, O.J.C. No. 9039/97 Their Lordships of Orissa High Court by Common Judgment while disposing the writ petitions of the casual workers of State Bank of India who were later on empanelled as per the settlements which facts are similar to the case of the workman in hand found no substance in the petition and that the said decision of Orissa High Court was assailed before the Hon'ble Supreme Court in SLP and the Division Bench of the Apex Court dismissed the same on merits. Workman has also no case for regularisation in view of the ruling of Hon'ble Supreme Court in Ashwini Kumar and Ors. V/s. State of Bihar & Ors., 1997 (Labour I.C. 576). In view of the decision of Hon'ble Supreme Court referred to above the workman is not entitled to any relief and in that context the banks action is totally justified. As stated earlier, reference is not maintainable as it suffers from delay and laches and on merits. In view of the decisions of Supreme Court, the action of the management being justified the unions claim is devoid of substance. Issues are therefore answered accordingly and hence the order :—

ORDER

The action of the management of State Bank of India, Goa in terminating/discontinuing the services of Shri Suresh Mahadeo Mahadik w.e.f. January 1992 is justified.

S.N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 434.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्रीय पशु प्रजनन फॉर्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय बीकानेर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-03 को प्राप्त हुआ था।

[सं. एल-42012/11/98-आई आर (डीयू)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 434.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal/Labour Court Bikaner as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Cattle Breeding Farm and their workman, which was received by the Central Government on 08-01-03

[No. L-42012/11/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण, बीकानेर

नं.मु. केन्द्रीय औद्यौ. वि. प्रसंग सं. 3 सन् 2002

कमला प्रसाद

विरुद्ध

डायरेक्टर, केन्द्रीय पशु प्रजनन फार्म, सूरतगढ

प्रसंग अन्तर्गत धारा 10(1)(घ), औद्योगिक विवाद अधिनियम, 1947

न्यायाधीश-श्री के.एल. माथुर,

आर.एच.जे.एस.

उपस्थिति :—

1. श्री भारत भूषण आर्य, यूनियन प्रतिनिधि

दिनांक 19 अप्रैल, 2002

अधिनिर्णय

श्रम मंत्रालय, भारत सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 की उपधारा (1) के खण्ड (घ) के अधीन जारी अधिसूचना क्रमांक एल.-42012/11/1998 आई.आर. (डीयू) दिनांक 19-12-2001 के द्वारा प्रेषित इस प्रसंग के अन्तर्गत निम्न विवाद अधिनिर्णयार्थ इस अधिकरण में भेजा था :

"Whether the action of the management of Central Cattle Breeding Farm, Suratgarh is justified in terminating the services of the workman Sh. Kamla Prasad daily rated casual labour w.e.f. 17-9-89? If not, to what relief to the workman is entitled to and from what date?"

2. प्रसंग प्राप्त होने पर प्रकरण दर्ज रजिस्टर किया गया, प्रार्थी यूनियन की ओर से प्रतिनिधि श्री भारत भूषण आर्य उपस्थित आये, यूनियन द्वारा अब तक क्लेम विवरण प्रस्तुत नहीं किया गया है और आज दिनांक 19-4-02 को जब यह प्रकरण हमारे समक्ष प्रस्तुत हुआ तो यूनियन प्रतिनिधि द्वारा इस प्रकरण में आगे कोई कार्यवाही नहीं कराना चाहा गया, इन हालात में ऐसा प्रकट होता है कि पक्षकारों के मध्य अब कोई विवाद नहीं रह गया है। अत: प्रार्थी यूनियन एवं नियोजक के बीच ''कोई विवाद नहीं'' का यह पंचाट पारित किया जाता है जो प्रकाशनार्थ राज्य सरकार को भेजा जावे।

3. आज्ञा आज दिनांक 19-4-2002 को विवृत न्यायालय में सुनाई गई।

के० एल० माथुर, न्यायाधीश

नई दिल्ली, 8 जनवरी, 2003

का. आ. 435.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्रीय पशु प्रजनन फॉर्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय बीकानेर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-42012/10/98-आई. आर.(डीयू)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 435.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal/Labour Court Bikaner as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Cattle Breeding Farm and their workman, which was received by the Central Government on 08-01-2003

[No. L 42012/10/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण, बीकानेर

नं.मु. केन्द्रीय औद्यौ. वि. प्रसंग सं. 2 सन् 2002

रामकरण

विरुद्ध

निदेशक केन्द्रीय पशु प्रजनन फार्म, सूरतगढ़

प्रसंग अन्तर्गत धारा 10(1)(घ), औद्योगिक विवाद अधिनियम, 1947

न्यायाधीश-श्री के.एल. माथुर, आर.एच.जे.एस.

उपस्थिति :—

1. श्री भारत भूषण आर्य, यूनियन प्रतिनिधि

दिनांक 19 अप्रैल, 2002

अधिनिर्णय

श्रम मंत्रालय, भारत सरकार द्वारा औद्योगिक विवाद अधिनियम, 1947 की धारा 10 की उपधारा (1) के खण्ड (घ) के अधीन जारी अधिसूचना क्रमांक एल. 42012/10/1998 आई.आर. (डीयू) दिनांक 19-12-2001 के द्वारा प्रेषित इस प्रसंग में वर्णित निम्न विवाद अधिनिर्णयार्थ इस अधिकरण में भेजा था :

"Whether the action of the management of Central Cattle Breeding Farm, Suratgarh is justified in terminating the services of the workman Sh. Ram Karan S/o Sh. Shobha Ram w.e.f. 12-9-98? If not, to what relief to the workman is entitled to and from what date ?".

2. प्रसंग प्राप्त होने पर प्रकरण दर्ज रजिस्टर किया गया, प्रार्थी यूनियन की ओर से श्री भारत भूषण आर्य, उपस्थित आये, जिनके द्वारा अब तक क्लेम विवरण प्रस्तुत नहीं किया गया है। आज दिनांक 19-4-2002 को जब यह प्रकरण हमारे समक्ष प्रस्तुत हुआ तो यूनियन प्रतिनिधि द्वारा इस प्रकरण में आगे कोई कार्यवाही कराना नहीं चाहा गया, इन हालात में ऐसा प्रकट होता है कि पक्षकारों के मध्य अब कोई विवाद नहीं रह गया है। अत: प्रार्थी यूनियन एवम् नियोजक के बीच ''कोई विवाद नहीं'' का यह पंचाट पारित किया जाता है जो प्रकाशनार्थ राज्य सरकार को भेजा जावे।

3. आज्ञा आज दिनांक 19-4-2002 को विवृत न्यायालय में सुनाई गई।

के.एल. माथुर, न्यायाधीश

नई दिल्ली, 8 जनवरी, 2003

का. आ. 436.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सब रिजनल इन्स्पैक्टर (पोस्टल) के प्रबंधत तंत्र के संबद्ध नियोजकों और उनके

कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/चेन्नई के पंचाट (संदर्भ संख्या 154/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-40012/56/99-आई. आर.(डीयू)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 436.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 154/2001) of the Central Government Industrial Tribunal/Labour Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sub Divisional Inspector (Postal) and their workman, which was received by the Central Government on 08-01-2003

[No. L-40012/56/99-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 2nd December, 2002

Present: K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 154/2001
(Tamil Nadu State Industrial Tribunal I.D.No. 149/99)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri S.Kempaiah and Management of the Sub Divisional Inspector (Postal) and Superintendent of Post Offices, Dharmapuri Division, Dharmapuri]

BETWEEN

Sri S.Kempaiah : I Party/ Workman

AND

1. Sub Divisional Inspector (Postal) Krishnagiri West Sub Division, Krishnagiri. : II Party/Management

2. Superintendent of Post Offices, Dharmapuri Division, Dharmapuri.

APPEARANCE:

For the Workman : M/s. S. Jothivani & G. V. Kasthuri, Advocates

For the Management : Mr. M. Venkkat Eswaran, Addl. CGSC

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and Sub-section 2 (A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned industrial dispute for adjudication vide Order No.L-40012/56/99/IR (DU) dated 30-07-1999.

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai, where the same was taken on file as I. D. No. 149/99. When the matter was pending enquiry in that Tribunal, Government of India, Ministry of Labour was pleased to order transfer of this case also from the file of Tamil Nadu State Industrial Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, this case has been taken on file as I.D. No. 154/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 02-02-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case further. Both the Claim Statement and Counter Statement have been filed earlier before the Tamil Nadu State Industrial Tribunal itself when the matter was pending dispute for adjudication.

Upon perusing the Claim Statement, Counter Statement, the documentary evidence let in on either side, the other material papers on record, the written arguments filed by the learned counsel for the II Party/Management after hearing the arguments advanced by the learned counsel for the I Party/Workman and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above mentioned order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

> " Whether the action of Sub Divisional Inspector (Postal) Krishnagiri West Sub Division, Krishnagiri and Superintendent of Post Offices, Dharmapuri Division, Dharmapuri in terminating Sri S. Kempaiah from service is legal and justified ? If not, to what relief the workman is entitled ?"

2. The averments in the Claim Statement filed by the I Party/Workman Sri S.Kempaiah (hereinafter refers to as Petitioner) are briefly as follows :—

The Petitioner was working as EDDA Samanapalli BO A/W Sulagiri S.O. in Dharmapuri Division. The Petitioner had rendered his services to the entire satisfaction of his superiors without any blemish. The Sub-Divisional Inspector (Postal), Krishnagiri West Sub-Division, Krishnagiri, conducted investigation alleging certain irregularities in the work of the Petitioner and

placed the Petitioner under put off duty w.e.f. 26-7-85. The Sub-Divisional Inspector (Postal) Krishnagiri West Sub-Division, Krishnagiri issued a charge memo dated 6-1-86 alleging that the Petitioner had forged M. O. No.4515 dated 17-2-85 of Kothapetta for Rs.35 payable to Smt. Solaiammal and misappropriated the amount for his personal use and that he had forged M. O. No. 4517 dated 17-2-85 of Kothapetta for Rs.35 payable to Smt. Muniyammal W/o. Late Thimanarayanappa and misappropriated the amount for his personal use. The Petitioner denied the charges on 13-1-86. The Sub-divisional Inspector (Postal) Krishnagiri West Sub-Division, Krishnagiri appointed an Enquiry Officer and a Presenting Officer by his letter dated 3-6-86. The Enquiry Officer conducted the preliminary enquiry on 21-2-86. The Petitioner nominated one A. R. Gopalan, Assistant Post Master, Krishnagiri H. O. as his defence assistant. The Enquiry Officer who refused to accept the nomination first has subsequently permitted the nomination of Sri A. R. Gopalan as Petitioner's defence assistant. The Petitioner perused the documents annexed in memo of charges on 29-9-86. He submitted a list of additional documents required for perusal and produced list of witnesses to be examined on his behalf. He submitted another list of additional documents on 5-3-88 and again on 30-05-88 which were turned down by the Enquiry Officer by his letter dated 31-1-89. The Petitioner requested the Enquiry Officer for postponement of enquiry on health grounds by producing medical certificate on 26-3-89. But the Enquiry Officer conducted the enquiry ex-parte on 29-3-89 and 30-3-89. Again the Petitioner submitted another petition dated 27-9-89 for production of some of the list of documents required for perusal and prepare defence and the list of witnesses to be examined on behalf of the defence. The Enquiry Officer conducted further enquiry on 28-9-89 and examined some of the witnesses. On the enquiry subsequently conducted on 26-7-90 the two prosecution witnesses were treated as hostile and some of the prosecution witnesses have been dispensed with as they have not turned up for the enquiry. The Petitioner was questioned by the Enquiry Officer on 15-10-90. The Presenting Officer submitted his plea on 16-10-90. The defence representative submitted his brief on 21-11-90. The Enquiry Officer submitted his report on 31-12-90 with the finding that the charges levelled against the Petitioner as proved. Then the Sub-Divisional Inspector (Postal) Krishnagiri West Sub-Division, Krishnagiri forwarded a copy of the Enquiry Officer's report to the Petitioner and Called for his explanation. The Petitioner submitted his defence statement on 13-02-91. the Sub Divisional Inspector (Postal) Krishnagiri West Sub Division, Krishnagiri issued the order of removal from service dated 28-2-91. Then the Petitioner preferred an appeal before the Superintendent of Post Offices, Dharmapuri Division, Dharmapuri on 27-5-91 and the Appellate Authority has rejected the appeal by his order dated 26-8-91 by confirming the order of the Sub-Divisional Inspector (Postal) Krishnagiri West Sub-Division, Krishnagiri in imposing the penalty of dismissal from service against the Petitioner. Then the Petitioner has filed a 2A petition by raising an industrial dispute for conciliation before the Regional Labour Commissioner Central, Chennai. Since the conciliation proceedings ended in failure, the matter has been referred to Labour Ministry, which in turn, made a reference to this Tribunal to adjudicate this dispute as an industrial dispute between the parties. The long delay in finalising the enquiry vitiated the enquiry itself. Even though the Petitioner was placed under put off duty, on 26-7-85, the Enquiry Officer has finalised only on 28-2-91 with the long delay of more than 5 years which itself vitiated the enquiry. The Petitioner had requested for three additional documents on 5-3-88 and some more documents on 30-5-88 for perusal to defend his case effectively and to cross examine the witnesses. The Enquiry Officer denied access to the documents called for and the denial of supply of documents has caused the Petitioner much prejudice in defending his case and as such the non-supply of additional documents denied the Petitioner reasonable opportunity in defending his case and it is in violation of principles of natural justice. This is a case of no evidence. The charges levelled against the Petitioner are that the Petitioner has forged money orders addressed to some of the witnesses . The signatures of those persons have not been sent for expert evidence and in the absence of any unimpeachable evidence holding the charges levelled against the Petitioner as proved is without application of mind and without any basic evidence. The prosecution witnesses who were cited as witnesses in annexure III to the charge memo have not been examined during the enquiry and the statement given by them during the preliminary enquiry were marked as prosecution documents through the Presenting Officer. The Statements of witnesses were obtained behind the back of the Petitioner and they have not been examined during the enquiry and the Petitioner was not given an opportunity to cross examine them. The Enquiry Officer had held that the charges are proved basing his reliance solely on the statements of the witnesses obtained during the preliminary enquiry behind the back of the Petitioner. The Disciplinary Authority and Appellate Authority have based their reliance solely on the statements obtained from the prosecution witnesses who have not been examined during the enquiry. Neither the complaint given by Thasildhar was produced as evidence during the enquiry nor the Thasildhar was examined as a prosecution witness. As such, placing reliance on the complaint of Thasildhar, Hosur, shows the consideration of extraneous matter by the authority for deciding the case. The Enquiry Officer and the Disciplinary Authority as well as the Appellate Authority have concluded that the Petitioner had affixed his signature and thumb impression in the documents and misappropriated

the amounts covered under the Money Orders. The prosecution ought to have called for expert opinion to prove the case and failure of the same shows that this case is of no evidence. Onus of proof is based only on prosecution and not on the defence and as such in the absence of any unimpeachable evidence, holding the charges against the Petitioner's as proved disclose the non-application of mind and it is illegal and arbitrary exercise of power. Hence, it is prayed that this Hon'ble Tribunal may be pleased to pass an award setting aside the orders of the Disciplinary Authority as well as the appellate authority in removing the Petitioner from service and consequently direct the Respondent/Management to reinstate the Petitioner as Extra Departmental Delivery Agent, Samanapalli BO with all concomitant and monetary benefits.

3. The averments in the common Counter Statement filed by the II Party/Management Sub Divisional Inspector (Postal) Krishnagiri West Sub Division, Krishnagiri and Superintendent of Post Offices, Dharmapuri Division, Dharmapuri (hereinafter refers to as Respondent) are briefly as follows: —

The Petitioner has filed this petition before this Tribunal on 23-9-98 after a lapse of 7 years and 9 months from the date of removal from service i.e. on 28-2-91, hence the petition is liable for dismissal as per Section 12 Note 4 (a) (18). The allegations in the petition are denied except those that are specifically admitted herein and the Petitioner is put to strict of the same. Sri S. Kempaiah, the Petitioner while working as EDDA Samanapalli Post Office had not paid the value of M.O. Nos. 4515, 4517 and 4523 dated 7-2-85 of Kothapetta Post Office each were Rs. 35/- to be paid to Smt. Chellammal, Smt. Muniyammal and Smt. Nuniyammal W/o. Appanna of Samanapalli respectively. But in the Post Office documents and records the Petitioner has shown those Money Orders have been paid to the respective payees and he had taken the value of the said M.Os for his personal use. The Petitioner was issued charge memo dated 6-1-86 for the said misconduct under Rule 8 of P & T ED Agents (C & S) Rules, 1964 by the Sub Divisional Inspector (Postal) Krishnagiri West Sub Division, Krishnagiri. Sri T. Selvaraj, Sub Divisional Inspector (Postal) Dharmapuri East and E. Dharmaraj, Sub Divisional Inspector (Postal) Hosur Sub Division were appointed as Enquiry Officer and Presenting Officer respectively on 3-6-86 to enquire into the charges the Enquiry Officer on conducting the enquiry submitted his report dated 13-12-90 with the finding that all the three articles of charges levelled against the Petitioner were proved. The Petitioner submitted his representation on the Enquiry Officer's report on 13-2-91. The Sub Divisional Inspector (Postal) Krishnagiri West Sub Division, Krishnagiri had carefully considered the representation of the Petitioner, Enquiry Officer's report and other connected records and awarded penalty of removal of the Petitioner from service by his memo dated 28-2-91. The Petitioner preferred an appeal on 25-7-91 to the Superintendent of Post Offices, Dharmapuri Division, Dharmapuri which was rejected by the Appellate Authority by his memo dated 26-8-91. The Petitioner was removed from service by the Sub Divisional Inspector (Postal) Krishnagiri West Sub Division, Krishnagiri by his memo dated 28-2-91. A domestic enquiry was conducted on the complaint received from the Thasildhar, Hosur regarding non-payment of old age pension MOs by the Petitioner. During the preliminary enquiry it was proved that the Petitioner has not paid the said old age pension MOs to the payees as per the Post Office records and taken the value of the M.Os for his personal use. The Petitioner had no grievance against the investigation officer at the time of enquiry. The delay in finalisation of Rule 8 enquiry was due to various reasons including the Petitioner himself who had not co-operated with the enquiry. The Petitioner has raised all these points in his appeal dated 27-5-91. After considering all these points only the Appellate Authority passed an order concurring with the findings of the Enquiry Officer and the punishment awarded by the Disciplinary Authority by the Petitioner by rejecting the appeal. The Petitioner was removed from service after observing the due procedure enunciated in P & T ED Agents (C & S) Rules, 1964. Hence, it is prayed that this Hon'ble Tribunal may be pleased to dismiss that petition.

4. When the matter was taken up for enquiry, no one has been examined as a witness on either side. 7 documents have been filed on the side of the I Party/Workman as Ex. W1 to W 7 and two documents have been filed on the side of the II Party/Management as Ex. M1 and M2. Learned counsel for the I Party/Workman had advanced her oral arguments and the learned counsel for the II Party/ Management had filed his written arguments.

5. The Point for my consideration is : —

"Whether the action of Sub Divisional Inspector (Postal) Krishnagiri West Sub Division, Krishnagiri and Superintendent of Post Offices, Dharmapuri Division, Dharmapuri in terminating Sri S. Kempaiah from service is legal and justified? If not, to what relief the workman is entitled ?"

Point:—

The I Party/Workman, the Petitioner herein, Sri S. Kempaiah was working as EDDA, Samanapalli BO in Dharmapuri Division. The Sub Divisional Inspector (Postal), Krishnagiri West Sub Division, Krishnagiri conducted investigation in respect of allegation of certain irregularities in the work of the Petitioner/Workman and placed him under put off duty with effect from 26-07-1985. Then the Petitioner was issued with a charge memo dated 6-1-86 alleging that he had forged M.O. No. 4515 dated 7-02-85 of Kothapetta for Rs. 35/- payable to Smt. Solaiammal and misappropriated the amount for his personal use and that he had forged M.O.No.4517 dated 7-02-85 of Kothapetta for Rs.35/-

payable to Smt. Muniyammal, W/o late Thimanarayanappa and misappropriated the amount for his personal use and that he had forged M.O. No. 4523 dated 7-2-85 of Kothapetta for Rs.35/- payable to Smt. Muniyammal, W/o. Appanna and misappropriated the amount for his personal use. The Petitioner denied the charges and hence Sub Divisional Inspector (Postal) Krishnagiri West Sub Division, Krishnagiri appointed an Enquiry Officer and Presenting Officer to enquire into the charges levelled against the Petitioner and to file his report with his findings. The Petitioner nominated one Sri A.R. Goplan, Asstt. Postmaster Krishnagiri H.O. as his defence assistant. In the enquiry out of the six witnesses listed in annexure IV to the charge memo, three witnesses have been examined on the side of the management and 11 documents were filed. On completion of the management witnesses examination also, the Petitioner/Workman, the charge sheeted employee, had denied the charges. Then the Enquiry Officer examined the charge sheeted employee with regard to the documents marked as exhibits on the side of the management. He has deposed that he has disbursed the Money Order amounts to the concerned person and the statement Ex. B11 was given under threat and as to the dictation of the Inspector. The Xerox copy of the depositions of witnesses examined on the management side are Ex.W1 to W3 and the deposition of the Petitioner, charge sheeted employee before the Enquiry Officer is Ex. W4. On completion of the enquiry, the Enquiry Officer has submitted his enquiry report dated 31-12-1990. The xerox copy of the same is Ex. W5. The Enquiry Officer has given his finding in his report that the charged official is guilty of the three charges and the charges stand proved. The Sub Divisional Inspector (Postal), Krishnagiri West Sub Division, Krishnagiri forwarded the copy of the Enquiry Officer's report to the Petitioner and called for his explanation and the Petitioner has submitted his explanation dated 13-2-91 and the Xerox copy of the same is Ex.W6. After considering the representation of the Petitioner under Ex.W6 with the Enquiry Officer's report and other connected records, the Sub Divisional Inspector (Postal) Krishnagiri West Sub Division, Krishnagiri awarded punishment of removal by his memo dated 28-02-1991. The xerox copy of that order of removal dated 28-02-91 is Ex.W7. Against that the Petitioner preferred an appeal on 27-5-91 to the Superintendent of Post Offices, Dharmapuri Division, Dharmapuri. The xerox copy of that appeal preferred by the Petitioner is Ex. M1. The Appellate Authority has rejected the appeal of the Petitioner by his order dated 26-8-91. The xerox copy of the same is Ex. M2.

6. Challenging the action of the Sub Divisional Inspector (Postal) Krishnagiri West Sub Division, Krishnagiri and Superintendent of Post Offices, Dharmapuri Division, Dharmapuri, in terminating the Petitioner from service, this industrial dispute has been raised by him. It is the contention of the Petitioner that the long delay in finalising the enquiry vitiated the enquiry and that the Petitioner had requested for three additional documents on 5-3-88 and some more documents on 30-05-88 for perusal to defend his case effectively and to cross examine the witnesses, but the Enquiry Officer denied access to the documents called for and denial of supply of those documents had caused much prejudice in defending the case and as such the non-supply of the additional documents denied him reasonable opportunity in defending his case and it is in violation of principles of natural justice. Though he has taken one such stand in the Claim Statement filed here before this Tribunal, he has not come forward by let in any oral evidence before this Tribunal as to how the non-supply of the documents he called for has prejudiced him. It is seen from the Enquiry Officer's report that at the time of the enquiry, though the Petitioner has taken part in the entire enquiry with his defence assistant had cross examined all the management witnesses and at that time he has not expressed before the Enquiry Officer for the non-supply of the documents he called for he is not in a position to effectively cross examine those witnesses and that non-supply of the documents he called for has caused him much prejudice in defending his case. Further it is seen that in Ex. W6, his explanation to the Enquiry Officer's report, he has not raised this plea that he was very much prejudiced because of the non-supply of the documents he called for and hence he could not put forth his defence, effectively during the enquiry. So from this it is seen that it is only an afterthought now that has been raised before this Tribunal and the same has not been established by the Petitioner before this Tribunal also by let in any acceptable evidence.

7. It is admitted that during the preliminary enquiry, the Petitioner, charge sheeted employee has given a statement before the officer, who conducted the preliminary enquiry and it has been marked as Ex. B II in the enquiry and the Petitioner was also questioned by the Enquiry Officer about that statement he has given earlier to the officer, who conducted the preliminary enquiry. In his evidence under Ex. W4, the xerox copy of the deposition, he has deposed that he gave that statement to the dictation of the Inspector and under the threat made by the Inspector that if he refused to give statement, he will be handed over to the police. But this has not been mentioned earlier by the Petitioner concerned to any higher official in respect of the statement obtained by the Inspector who conducted the preliminary enquiry under threat and coercion and he was forced to give one such statement to the dictation of that Inspector. It is seen from the records Ex. B II, the statement was given by the Petitioner before the Sub Divisional Inspector (Postal) on 25-7-1985. When the Enquiry Officer questioned him with regard to that statement Ex. B II in the enquiry on 15-10-90 only he has come forward for the first time that it was obtained by the Inspector under threat and coercion . A perusal of the entire records

available in this case clearly shows that sufficient opportunity has been given to the charge sheeted employee, the Petitioner herein, by the Enquiry Officer in the domestic enquiry and the charge sheeted employee has availed that opportunity along with his defence representative by taking part in full in the domestic enquiry and has also cross examined at length the prosecution witnesses. So, it cannot be said that he has not been given reasonable opportunity to defend his case and the enquiry is vitiated as it has been conducted in violation of principles of natural justice. As it is held in various cases by the various High Courts and Hon'ble Supreme Court in a domestic enquiry the requirement of proof is not proving the charges levelled against the charge sheeted employee all beyond reasonable doubt but mere preponderance of probability is sufficient. From the perusal of the documents available in this case, it is seen that the Enquiry Officer has come to the conclusion that the charges levelled against the Petitioner, charge sheeted employee has been proved on the basis of the sufficient evidence. So, it can be said that there are preponderance of probabilities for the Enquiry Officer to come to such a conclusion that the charges levelled against the Petitioner has been proved. This has been discussed in detail by the Enquiry Officer in his report and by the Disciplinary Authority in his order of imposing punishment and after giving due opportunity to the Petitioner by the Appellate Authority in his order for rejecting the appeal. So, under such circumstances, it cannot be said that this is a case of no evidence as alleged by the Petitioner and the entire enquiry has not been conducted by observing due procedure enunciated in P&T ED Agents (Conduct and Service) Rules, 1964. On the other hand, the documents and other materials available in this case clearly show that the entire domestic enquiry has been conducted by the Departmental Authorities by observing due procedure enunciated in P&T ED Agents (Conduct and Service) Rules, 1964 and there is no violation in procedure and violation of any principles of natural justice by the Respondent in conducting the domestic enquiry and in coming to the conclusion that the charges levelled against the Petitioner, charge sheeted employee has been proved to find him guilty and to award him the punishment imposed upon him. Under such circumstances, there is no scope for this Tribunal to interfere with the findings of the Enquiry Officer, since it is not perverse or biased finding. It is seen that as observed by the Disciplinary Authority in his order as well as the Appellate Authority in his order while rejecting the appeal, the charges levelled against the Petitioner, charge sheeted employee are very serious which affects the trustworthiness of the department and that the Petitioner as the employee under the department had not maintained the trust reposed on him by the poor, old age pensioners in distress. So, the decision taken by the Disciplinary Authority as well as Appellate Authority in not allowing such persons to continue in the service of the department is correct and justified. Under such circumstances, it can be held that the action of the Sub Divisional Inspector (Postal) Krishnagiri West Sub Division, Krishnagiri and Superintendent of Post Offices, Dharmapuri Division, Dharmapuri in terminating Sri S. Kempaiah from the service is legal and justified and hence, the concerned workman is not entitled for any relief. Thus, the point is answered accordingly.

8. In the result, an Award is passed holding that the concerned workman Sri S. Kempaiah is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court this day the 2nd December, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Exhibited :—

For the I Party/Workman:—

Ex. No.	Date	Description
W1	27-9-89	Xerox copy of the deposition of Sri M. Seerangan before the Enquiry Officer on 27-9-89
W2	26-7-90	Xerox copy of the deposition of Sri R. Nagaraj before the Enquiry officer on 26-7-90.
W3	26-7-90	Xerox copy of the deposition of Sri T. Sankar before the Enquiry Officer on 26-7-90.
W4	15-10-90	Xerox copy of the deposition of the Petitioner before the Enquiry Officer on 15-1-90.
W5	31-12-90	Xerox copy of the enquiry report.
W6	13-2-91	Xerox copy of the representation given by the Petitioner against the Enquiry Officer's report.
W7	28-2-91	Xerox copy of the order of removal from service Issued to Petitioner by Respondent.

For the II Party/Management :—

Ex. No	Date	Description
M1	27-5-91	Xerox copy of the appeal preferred by the Petitioner to Superintendent of Post Offices, Dharmapuri Division
W2	26-8-91	Xerox copy of the order of the Appellate Authority against the appeal preferred by the Petitioner.

नई दिल्ली, 8 जनवरी, 2003

का.आ. 437.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट (संदर्भ संख्या 84/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-40012/23/99-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 437.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/99) of the Central Government Industrial Tribunal/Labour Court Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of D/o Telecom and their workman, which was received by the Central Government on 8-1-2003.

[No. L-40012/23/99-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT "SHRAM SADAN",

III MAIN, III CROSS, II PHASE, TUMKUR ROAD, YESHWANTHPUR, BANGALORE

Dated, 30th December 2002

PRESENT:

HON'BLE SHRI V. N. KULKARNI, B.Com. LLB, Presiding Officer

CGIT-CUM-LABOUR COURT, BANGALORE

C. R. No. 84/99

I Party

Shri S. Veerabhadra,
S/o D. Sadashiv Shet,
New B.H. Road,
Sagar,
Distt. Shimoga-577401

II Party
The General Manager,
Department of Telecommunication,
Distt. Shimoga-577201

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-40012/23/99-IR(DU) dated 21st July, 1999 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of Department of Telecommunication, Shimoga in terminating the services of Shri Veerabhadra is legal and justified? If not, to what relief the workman is entitled ?"

2. The first party was working with the Second Party Management. He was terminated and therefore Industrial Dispute is raised.

3. Parties appeared and filed Claim Statement and Counter respectively.

4. The case of the workman is that he joined the department as a Casual Mazdoor of Temporary Status on 6th March, 1985 and he was continuously working with the management till he was illegally terminated on 12th January, 1996. Workman was given the Temporary Status vide letter No. D/48/A/CM/889-90/61 dated 26th February, 1990 with effect from 1-10-1989.

5. It is the further case of the workman that he had completed 10 years of service. The allegation that the Sub Divisional Officer on 2-1-1995 has conducted an enquiry on the report dated 3-11-1995 of the Assistant Sub-Inspector, Kargal Police Station, Sagar in CR. No. 59/95 is not correct and the signature of the workman was taken on a Written Statement. In fact no proper enquiry was conducted against him by giving opportunity and therefore the so-called enquiry is against the provisions of Principles of Natural Justice.

6. It is the further case of the workman that he was acquitted by the Additional Civil Judge and JMFC at Sagar vide order dated 20th January, 1998 and soon after the acquittal he represented to the Second Party but the second party refused to reinstate him. Therefore the first party has prayed to pass award in his favour.

7. As against this the case of the Management in brief is as follows:

8. It is denied that the first party was appointed as a Casual Mazoor of Temporary Status on 6th March, 1985. No appointment order was given. The first party was engaged on daily wages. He remained absent unauthorisedly from work without prior permission from 1-9-95 to 6-11-95.

9. It is the further case of the management that the workman has committed an offence punishable under

Indian Penal Code. Details are given in para 2 of the Counter. It is not correct to say that no proper enquiry was conducted infact opportunity was given and enquiry was conducted against the workman and misconduct was proved. There is no existence of casual work in the department. Management for these reasons and for some other reasons has prayed to reject the reference.

10. Management examined MW1, the Sub Divisional Officer. He has stated that the workman was engaged for development and maintenance works of the department. It was for fixed period and engaged as casual labour whenever there is work and this type of work is not available now.

11. It is his further evidence that the workman has remained absent as per Ex. M1. First party was involved in a criminal case and enquiry was conducted against him. During the course of examination MW1 has stated that he does not know result of criminal case.

12. Before I proceed further it may be mentioned here that the workman has filed certified copy of the judgement of the Criminal Court and it is clear that the workman is acquitted. MW1 admits in his cross examination that during the year 1995 the status of first party was temporary status. It is alleged by the workman that he has continuously worked for 10 years. The management has not filed any document to rebut this allegation of the workman. MW1 has simply said in his cross examination that from 1985 the first party was working till 1995 and not continuously and he said there was a break. To prove the break etc. nothing is established by the management.

13. I have carefully perused Ex. M3, the scheme for regularization of casual workers.

14. Against this the workman has given evidence that he joined the Management on 6-3-1985 as temporary casual worker. He further says that work was refused to him on the ground that the criminal case was filed against him. No notice of enquiry was given to him. He was acquitted in criminal case. He further said he has continuously worked for more than 240 days in a year. Ex. W1 to W4 are filed by the workman. He says that as per Ex. W1 he was selected by the management and annual increment was given as per Ex. W2. He has continuously worked for 10 years. His name is at Sl. No. 62 of the list. For the reasons best known to the management, this witness is not cross examined.

15. Coming to the document, Ex. W1, the letter of the department regarding regularization of temporary status of Casual Mazdoors who have rendered 10 years of service or more as on 31-3-1995. This document is issued by the Competent Authority. This shows that as on the date of issue of this document workman was eligible for regularization and therefore, Ex. W1 was given to the workman. This itself is sufficient to say that the workman has proved that he has worked for more than 10 years and was given temporary status and he is entitled for regularization.

16. In order to rebut this Ex. M1, no document is filed by the management. The evidence of MW1 is not sufficient to rebut the same. According to Ex. W2 the workman was granted annual increment to the Temporary Status Casual Mazdoors. Ex. W4 is a document to show that the temporary status was given to the workman because he has joined on or before 30-3-1985 and worked continuously for 240 days. According to Ex. W4 the name of the workman is at Sl. No. 62 and his appointment is w.e.f. 6-3-1985. These documents given by the workman are sufficient to establish that the workmen was taken as Casual Mazdoor and was given temporary status. He has worked from 6-3-1985 continuously for 10 years and he has completed 10 years service on 31-3-1995. These documents coupled with evidence of WW1, it is clear that the workman is entitled for regularization.

17. Coming to the so called enquiry at the very outset I am of the opinion that this is not a proper enquiry and no opportunity was given to the workman to defend himself. Sub Divisional Officer, Shri Shivaramaiah has conducted enquiry and according to the management he himself has passed dismissal order. All this would go to show that the so called enquiry is not proper and the order of terminating the services of the workman is not correct.

18. The present workman has fulfilled the conditions for regularization. Futher the workman is acquitted by the competent criminal court, I am of the opinion that the workman is entitled for regularization. In the result I pass the following Order :

ORDER

The reference is partly allowed. The management is directed to regularize the services of the workman in the department as per rules. No other benefits are awarded.

(Dictated to PA transcribed by her corrected and signed by me on 30th December, 2002).

V.N. KULKARNI, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 438.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 124/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/116/98-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 438.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.124/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm and their workman, which was received by the Central Government on 8-1-2003.

[No. L-14012/116/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT:

RUDRESH KUMAR: Presiding Officer

I.D. No.124/2000 (Kanpur No. 102/99)

Ref. No. L-14012/116/98/IR(DU) dated 22-4-1999

Between

Sarjoo Prasad, C/o B.M.S. 32, Chakrata Road, Dehradun

And

The Officer, Incharge, Military Dairy Farm, Dehradun

AWARD

By order No. L-14012/116/98-IR(DU) dated 22-4-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub section (1) and section 2(A) of section 10 of the I.D. Act.1947 (14 of 1947) referred this industrial dispute between Sarjoo Prasad, C/o B.M.S., 32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No.Z-13011/1/97-CLS-II dated 21-8-2000, this case was transferred to this tribunal. The reference under adjudication is as under:

> "Whether the action of the Management Dairy Farm. Dehradun in terminating the Services of Sarjoo Prasad Ex Casual Labour is Legal and Justified ? If not to what relief the Workman is entitled ?"

2. Facts are that the workman Sarjoo Prasad was engaged by the Military Dairy Farm, Dehradun as a casual labour w.e.f. 15-2-1989. He worked continuously since then upto 31-8-98. In each year of his association as casual labour, he worked 240 days and more, thus, was in 'continuous service' as defined under section 25-B of the I.D. Act,1947. He was engaged in perennial nature of work. His services were illegally dispensed with by oral order w.e.f. 1-9-98, without any notice, notice pay and retrenchment compensation etc, as is obligatory under section 25-F of the said Act. It is also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go' was not followed. He was entitled to regularisation as per policy of the Government but the management terminated his services without observing prescribed procedures rendering termination order void-ab-initio. Relief of reinstatement with back wages have been claimed.

3. Aggrieved by his illegal retrenchment, the workman raised industrial dispute on 3-9-98 before the Asstt. Labour Commissioner(C),Dehradun. In compliance of the notice, the management appeared on 18-9-98 for conciliation as provided under section 12 of the I.D. Act.1947, but no settlement could be reached, resulting into Failure Report, the basis of present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection is raised stating that correct name of the opposite party is 'Military Farm' and not Military Dairy Farm and so, the reference is incorrect and can not be adjudicated. Also,other preliminary objections have been raised that the Military Farm is not an 'industry', Sarjoo Prasad, is not workman, as defined under the provisions of I.D. Act, and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity as this dispute should have been raised by the representative union. The management assailed the claim, stating that the work against which Sarjoo Prasad was engaged had been of seasonal nature. On mechanization of the Military Farm, need of man power reduced and so, retrenchment of casual labourers became necessary. Only juniors were retrenched by giving notice and compensation etc. as provided under law. The workman was disengaged on 23-9-98 and not on 1-9-98 as alleged . He was directed to collect his compensation from the office but he preferred not to attend the office to collect his cheque. Later, the compensation was sent by post which was refused, thus, there is substantial compliance of section 25-F of the I.D. Act. The workman was surplus and his services were terminated, retaining his name in the register to be called for duties on availability of work.

5. A copy of letter No. A/88043/PE/Q/MF-4(GEN) dated 24th August, 1998 from V.P. Singh, Brig, DDG, MF is filed by the management to support its case. This letter mentions that a commitment has been made in presentation

to COAS on 13-8-98 to reduce manpower by 01-9-98. In light of the said commitment, some actions were advised in the letter, to cease employment of CL/CLTS w.e.f. 1-9-98 after regularizing services of CLTS/CL to fill up vacancies as per revised PE and further, in future to provide temporary employment on job basis for seasonal nature of work. Taking of attendance on muster roll was also prohibited. The officer incharges were also made accountable for recovery and disciplinary action, in case any CL employed after 1-9-98.

6. The management has not disputed engagement of the workman as casual labourer or his continuous working upto 31-8-98. Also, specific denial has not been made assailing claim of the workman that he served 240 days and more in each year of his service. There is general denial of the claim without supporting documents. It is contended that he was surplus and so, was retrenched and his name is included in the list of workmen to be called for service in future on availability of work. Admittedly, retrenchment notice was not given before disengaging the workman,instead, he was directed to collect his compensation on 22-9-98 from the office. He preferred not to collect his cheque. Accordingly, he was terminated on 23-9-98, treating substantial compliance of section 25-F I.D. Act, 1947. Furthermore, his cheque was sent by registered post on 24-9-98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. The plea of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. 'Military Farm' is popularly called Military Dairy Farm and a workman, being illiterate, may commit such mistake. 'Military Farm' and Military Dairy Farm are not two distinct units to cause confusion to the management. The management, has filed written statement treating it to be Military Dairy Farm and also appeared in conciliation proceeding before ALC(C). Nothing is shown that any such objection was taken before the ALC (C) prior to submission of the Failure Report which formed basis of the reference. In the said background, this plea is purely technical, with no legal significance and thus, is rejected.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Military Diary Farm, is, to supply milk and other products to the soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature of activities are commercial. The management admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, is an 'industry' under the I.D. Act, 1947. The provisions of the I.D. Act, 1947 are applicable in the matter of casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I.D. Act, 1947. The O.M. No. 4914/2/86-Estt. dated 7-6-88, formulated scheme for regularisation and grant of temporary status to the casual labourers which are in conformity with the provisions of the I.D. Act, 1947. The management has not produced any rule showing exclusions of the I.D. Act, 1947 in connection with casual workers. Thus, Sarjoo Prasad, is a workman,and also is entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised by Sarjoo Prasad in individual capacity, under section 2-A of the I.D. Act, 1947, impugning his termination. He is not under obligation to approach through the union.

9. On merit; firstly; it is to be determined whether alleged termination was made , w.e.f. 1-9-98, or 23-9-98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14-8-98 of Brig. V.P. Singh who directed that the employment of CL/CLTS will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1-9-98 upto 23-9-98, his attendance on or after 1-9-98 on muster roll, and payment of his wages were made upto 23-9-98 was made. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was held on 18-9-98. How the management could have participated in hearing before 23-9-98, if the termination was not made before the said date. The retrenchment order No. E-4/TS/DL/F-2 dated 23-9-98, and retrenchment compensation cheque, appear to have been prepared subsequently, to remove legal defects. Had it not been so, the workman should have also been paid 23 days wages i.e. from 1-9-98 to 23-9-98 by the said cheque. This retrenchment order does not mention inclusion of 23 days wages. Two office memos dated 22-9-98 and 24-9-98 have been filed which mention that the workman did not report to collect his cheque. These documents are office reports. No document is filed to show that,in fact, the workman had any notice to collect his cheque on 22-9-98 i.e. one day in advance of 23-9-98. The case of the management can not be believed that termination was made on 23-9-98 or substantial compliance of section 25-F I.D. of the Act, 1947 was made. The workman, infact, was terminated w.e.f. 1-9-98 as per direction of Brig. V.P. Singh dated 14-8-98. It is also established that compliance of section 25-F of the I.D. Act, 1947 was not made, rendering the termination void-ab-initio.

10. The management failed to prove that Sarjoo Prasad was not entitled to temporary status as per office Memo No. 4912/2/86-Estt. © dated 7-6-88 and O.M. No. 51016/2/90-Estt. © Govt. of India, Ministry of Personal, P.G and Pension, Department of Personal and Training, New Delhi dated 10-9-93. Policy decisions through these documents, rationalised working of the casual workers, particularly, in the matter of their wages and future

regularisation. It provides for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after conferment of temporary status, such casual labourers, may be required to contribute to the General Provident Fund. Such workers may also be eligible for grant of festival advance, flood advance etc. on the same conditions as are applicable to temporary group 'D' employees. Para 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman had rendered continuous service for about 9 years and thus, was entitled to conferment of temporary status. Non issuance of formal order treating him casual labourer with temporary status, will not defeat his cause.

11. The submission of the management that there were no works to continue engagement of the workman can not be accepted in face of averment in letter dated 14-8-98 of Brig. V. P. Singh, where in it was directed to provide temporary employment on job basis and not to obtain signatures on muster roll. It implies availability of work. Even if there were seasonal works, the workman had preferential claim. No such order has been filed to give preference to the retrenched workmen. The action of the management is, thus, unjustified.

12. Admittedly, Sarjoo Prasad was a casual labour and he fulfilled eligibility criteria of being regularised. The management did not put any record to show availability of regular vacancies or absorption of casual labourers with temporary status, as was directed by Brig. V.P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating the services of the workman, on plea of surplusage without following statutory procedures and also benefits under Section 25-F of the I.D. Act,1947.

13. As such, the reference is adjudicated in favour of the workman Sarjoo Prasad. His termination is held void-ab-initio and he is entitled to reinstatement with full back wages.

14. Award as above.

Lucknow
31-12-2002 RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 439.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 114/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/118/98-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 439.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 114/2000) of the Central Government Industrial Tribunal/ Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm and their workman, which was received by the Central Government on 8-1-2003.

[No. L-14012/118/98-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR, Presiding Officer

I.D. No.114/2000 (Kanpur No. 92/99)

Ref. No. L-14012/118/99/IR(DU) dated 22-4-1999

BETWEEN

Raj Kumar, C/o B.M.S. 32, Chakrata Road, Dehradun

AND

The Officer, Incharge, Military Dairy Farm, Dehradun

AWARD

By Order No. L-14012/118/98/IR(DU) dated 22-4-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the I.D. Act.1947 (14 of 1947) referred this industrial dispute between Raj Kumar C/o B.M.S., 32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No. Z-13011/1/97-CLS-II dated 21-8-2000, this case was transferred to this tribunal. The reference under adjudication is as under :

"Whether the action of the management dairy farm, Dehradun in terminating the services of Raj Kumar Ex-Casual Labour is legal and justified? if not, to what relief the workman is entitled?"

2. Facts are that the workman Raj Kumar, was engaged by the Military Dairy Farm, Dehradun as a Casual labour w.e.f. 1-2-1986. He worked continuously since then upto 31-8-98. In each year of his association as casual labour, he worked 240 days and more, thus, was in 'continuous service' as defined under Section 25-B of the I.D. Act, 1947. He was engaged in perennial nature of work. His services were illegally dispensed with by oral order w.e.f. 1-9-98, without any notice, notice pay and retrenchment compensation etc, as is obligatory under Section 25-F of the said Act. It is also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go' was not followed. He was entitled to regularisation as per policy of the Government but the management terminated his services without observing prescribed procedures rendering termination order void-ab-initio. Relief of reinstatement with back wages have been claimed.

3. Aggrieved by his illegal retrenchment, the workman raised industrial dispute on 3-9-98 before the Asstt. Labour Commissioner(C), Dehradun. In compliance of the notice, the management appeared on 18-9-98 for conciliation as provided under Section 12 of the I.D. Act.1947, but no settlement could be reached, resulting into Failure Report, the basis of present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge contested the claim of the workman and filed written statement. A preliminary objection is raised stating that correct name of the opposite party is 'Military Farm' and not Military Dairy Farm and so, the reference is incorrect and can not be adjudicated. Also, other preliminary objections have been raised that the Military Farm is not an 'industry'. Raj Kumar, is not workman, as defined under the provisions of I.D. Act, and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity as this dispute should have been raised by the representative union. The management assailed the claim, stating that the work against which Raj Kumar was engaged had been of seasonal nature. On mechanization of the Military Farm, need of man power reduced and so, retrenchment of casual labourers became necessary. Only juniors were retrenched by giving notice and compensation etc. as provided under law. The workman was disengaged on 23-9-98 and not on 1-9-98 as alleged. He was directed to collect his compensation from the office but he preferred not to attend the office to collect his cheque. Later, the compensation was sent by post which was refused, thus, there is substantial compliance of Section 25-F of the I.D. Act. The workman was surplus and his services were terminated, retaining his name in the register to be called for duties on availability of work.

5. A copy of letter No. A/88043/PE/Q/MF-4 (GEN) dated 24th August, 1998 from V. P. Singh, Brig. DDG, MF is filed by the management to support its case. This letter mentions that a commitment has been made in presentation to COAS on 13-8-98 to reduce manpower by 01-9-98. In light of the said commitment, some actions were advised in the letter, to cease employment of CL/CLTS w.e.f. 1-9-98 after regularizing services of CLTS/CL to fill up vacancies as per revised PE and further, in future to provide temporary employment on job basis for seasonal nature of work. Taking of attendance on muster roll was also prohibited. The officer incharges were also made accountable for recovery and disciplinary action, in case any CL employed after 1-9-98.

6. The management has not disputed engagement of the workman as casual labourer or his Continuous working upto 31-8-98. Also, specific denial has not been made assailing claim of the workman that he served 240 days or more in each year of his service. There is general denial of the claim without supporting documents. It is contended that he was surplus and so, was retrenched and his name is included in the list of workmen to be called for service in future on availability of work. Admittedly, retrenchment notice was not given before disengaging the workman,instead, he was directed to collect his compensation on 22-9-98 from the office. He preferred not to collect his cheque. Accordingly, he was terminated on 23-9-98, treating substantial compliance of Section 25-F I.D. Act, 1947. Furthermore, his cheque was sent by registered post on 24-9-98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. The plea of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. 'Military Farm is popularly called Military Dairy Farm and a workman, being illiterate, may commit such mistake. 'Military Farm' and Military Dairy Farm are not two distinct units to cause confusion to the management. The management, has filed written statement treating it to be Military Dairy Farm and also appeared in conciliation proceeding before ALC(C). Nothing is shown that any such objection was taken before the ALC(C) prior to submission of the Failure Report which formed basis of the reference. In the said background, this plea is purely technical, with no legal significance and thus, is rejected.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Military Dairy Farm, is, to supply milk and other products to the

soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature of activities are commercial. The management admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, is an 'industry' under the I.D. Act, 1947. The provisions of the I.D. Act, 1947 are applicable in the matter of casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I.D. Act, 1947. The O.M. No. 4914/2/86-Estt. dated 7-6-88, formulated scheme for regularisation and grant of temporary status to the casual labourers which are in conformity with the provisions of the I.D. Act, 1947. The management has not produced any rule showing exclusions of the I.D. Act, 1947 in connection with casual workers. Thus, Raj Kumar, is a workman and also is entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised by Raj Kumar in individual capacity, under Section 2-A of the I.D. Act, 1947, impugning his termination. He is not under obligation to approach through the union.

9. On merit, firstly, it is to be determined whether alleged termination was made, w.e.f. 1-9-98, or 23-9-98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14-8-98 of Brig. V. P. Singh who directed that the employment of CL/CLTS will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1-9-98 upto 23-9-98, his attendance on or after 1-9-98 on muster roll, and payment of his wages were made upto 23-9-98. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was held on 18-9-98. How the management could have participated in hearing before 23-9-98, if the termination was not made before the said date. The retrenchment order No. E-4/TS/DL/F-2 dated 23-9-98 and retrenchment compensation cheque, appear to have been prepared subsequently, to remove legal defects. Had it not been so, the workman should have also been paid 23 days wages i.e. from 1-9-98 to 23-9-98 by the said cheque. This retrenchment order does not mention inclusion of 23 days wages. Two office memos dated 22-9-98 and 24-9-98 have been filed which mention that the workman did not report to collect his cheque. These documents are office reports. No document is filed to show that, in fact, the workman had any notice to collect his cheque on 22-9-98 i.e. one day in advance of 23-9-98. The case of the management can not be believed that termination was made on 23-9-98 or substantial compliance of Section 25-F of I.D. Act, 1947 was made. The workman, infact, was terminated w.e.f. 1-9-98 as per direction of Brig. V.P. Singh dated 14-8-98. It is also established that compliance of Section 25-F of the I.D. Act, 1947 was not made, rendering the termination void ab-initio.

10. The management failed to prove that Raj Kumar was not entitled to temporary status as per office Memo No. 4912/2/86-Estt. © dated 7-6-88 and O.M. No. 51016/2/90-Estt. © Govt. of India, Ministry of Personnel, P.G. and Pension, Department of Personnel and Training, New Delhi dated 10-9-93. Policy decisions through these documents, rationalised working of the casual workers, particularly, in the matter of their wages and future regularisation. It provides for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed any where within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after conferment of temporary status, such casual labourers, may be required to contribute to the General Provident Fund. Such workers may also be eligible for grant of festival advance, flood advance etc. on the same conditions as are applicable to temporary group 'D' employees. Para 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman had rendered continuous service for about 12 years and thus, was entitled to conferment of temporary status. Non-issuance of formal order treating him casual labourer with temporary status, will not defeat his cause.

11. The submission of the management that there were no works to continue engagement of the workman can not be accepted in face of averment in letter dated 14-8-98 of Brig. V. P. Singh, wherein it was directed to provide temporary employment on job basis and not to obtain signatures on muster roll. It implies availability of work. Even if there were seasonal works, the workman had preferential claim. No such order has been filed to give preference to the retrenched workmen. The action of the management is, thus, unjustified.

12. Admittedly, Raj Kumar was a casual labour and he fulfilled eligiblity criteria of being regularised. The management did not put any record to show availability of regular vacancies or absorption of casual labourers with temporary status, as was directed by Brig. V.P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating the services of the workman, on plea of surplusage without following statutory procedures and also benefits under Section 25-F of the I.D. Act, 1947.

13. As such, the reference is adjudicated in favour of the workman. Raj Kumar. His termination is held void

ab-initio and he is entitled to reinstatement with full back wages.

14. Award as above.

Lucknow
30-12-2002 RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 440.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 118/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/119/98-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 440.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.118/2000) of the Central Governrnent Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm and their workman, which was received by the Central Government on 8-1-2003.

[No. L-14012/119/98-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT:

Rudresh Kumar, Presiding Officer

I.D. No. 118/2000 (Kanpur No. 96/99)

Ref. No. L-14012/119/99/IR(DU) dated 22-4-1999

BETWEEN

Ram Behari Yadav, C/o B.M.S. 32, Chakrata Road, Dehradun

AND

The Officer Incharge, Military Dairy Farm, Dehradun

AWARD

By order No. L-14012/119/98/IR(DU) dated 22-4-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and section 2(A) of section 10 of the I.D. Act, 1947 (14 of 1947) referred this industrial dispute between Ram Behari Yadav, C/o B.M.S.,32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No. Z-13011/1/97-CLS-II dated 21-8-2000, this case was transferred to this tribunal. The reference under adjudication is as under:

> "Whether the action of the Management Dairy Farm, Dehradun in terminating the services of Ram Behari Yadav, Ex Casual Labour is Legal and Justified ? If not to what relief the workman is enetitled ?"

2. Facts are that the workman Ram Behari Yadav was engaged by the Military Dairy Farm, Dehradun as a Casual labour w.e.f. 14-12-88. He worked continuously since then upto 31-8-98. In each year of his association as casual labour, he worked 240 days and more, thus, was in 'continuous service' as defined under Section 25-B of the I.D. Act, 1947. He was engaged in perennial nature of work. His services were illegally dispensed with by oral order w.e.f. 1-9-98, without any notice, notice pay and retrenchment compensation etc., as is obligatory under section 25-F of the said Act. It is also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go' was not followed. He was entitled to regularisation as per policy of the Government but the management terminated his services without observing prescribed procedures rendering termination order void ab-initio. Relief of reinstatement with back wages have been claimed.

3. Aggrieved by his illegal retrenchment, the workman raised industrial dispute on 3-9-98 before the Asstt. Labour Commissioner (C), Dehradun. In compliance of the notice, the management appeared on 18-9-98 for conciliation as provided under Section 12 of the I.D. Acts, 1947, but no settlement could be reached, resulting into Failure Report, the basis of present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection is raised stating that correct name of the opposite party is 'Military Farm' and not Military Dairy Farm and so, the reference is incorrect and can not be adjudicated. Also, other preliminary objections have been raised that the Military Farm is not an 'industry', Ram Behari Yadav, is not workman, as defined under the provisions of I.D. Act, and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity as this dispute should have been raised by the

representative union. The management assailed the claim, stating that the work against which Ram Behari Yadav was engaged had been of seasonal nature. On mechanization of the Military Farm, need of man power reduced and so, retrenchment of casual labourers became necessary. Only juniors were retrenched by giving notice and compensation etc. as provided under law. The workman was disengaged on 23-9-98 and not on 1-9-98 as alleged . He was directed to collect his compensation from the office but he preferred not to attend the office to collect his cheque. Later, the compensation was sent by post which was refused, thus, there is substantial compliance of section 25-F of the I.D. Act. The workman was surplus and his services were terminated, retaining his name in the register to be called for duties on availability of work.

5. A copy of letter No. A/88043/PE/Q/MF-4 (GEN) dated 24th August,1998 from V. P. Singh, Brig., DDG, .MF is filed by the management to support its case. This letter mentions that a commitment has been made in presentation to COAS on 13-8-98 to reduce manpower by 1-9-98. In light of the said commitment, some actions were advised in the letter, to cease employment of CL/CLTS w.e.f. 1-9-98 after regularizing services of CLTS/CL to fill up vacancies as per revised PE and further in future to provide temporary employment on job basis for seasonal nature of work. Taking of attendance on muster roll was also prohibited. The officer incharges were also made accountable for recovery and disciplinary action, in case any CL employed after 1-9-98.

6. The management has not disputed engagement of the workman as casual labourer or his continuous working upto 31-8-98. Also, specific denial has not been made assailing claim of the workman that he served 240 days or more in each year of his service. There is general denial of the claim without supporting documents. It is contended that he was surplus and so, was retrenched and his name is included in the list of workmen to be called for service in future on availability of work. Admittedly, retrenchment notice was not given before disengaging the workman,instead, he was directed to collect his compensation on 22-9-98 from the office. He preferred not to collect his cheque. Accordingly, he was terminated on 23-9-98, treating substantial compliance of section 25-F of the I.D. Act,1947. Furthermore, his cheque was sent by registered post on 24-9-98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. The plea of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. 'Military Farm' is popularly called Military Dairy Farm and a workman, being illiterate, may commit such mistake. 'Military Farm' and Military Dairy Farm are not two distinct units to cause or fusion to the management. The management, has filed written statement treating it to be Military Dairy Farm and also appeared in conciliation proceeding before ALC (C). Nothing is shown that any such objection was taken before the ALC (C) prior to submission of the Failure Report which formed basis of the reference. In the said background, this plea is purely technical, with no legal significance and thus, is rejected.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Military Dairy Farm, is, to supply milk and other products to the soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature of activities are commercial. The management admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, is an 'industry' under the I.D. Act, 1947. The provisions of the I.D. Act, 1947 are applicable in the matter of casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I.D. Act, 1947. The O.M. No. 4914/2/86-Estt. Dated 7-6-88, formulated scheme for regularisation and grant of temporary status to the casual labourers which are in conformity with the provisions of the I.D. Act, 1947. The management has not produced any rule showing exclusions of the I.D. Act, 1947 in connection with casual workers. Thus, Sarjoo Prasad, is a workman, and also is entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised Ram Behari Yadav in individual capacity, under section 2-A of the I.D. Act, 1947, impugning his termination. He is not under obligation to approach through the union.

9. On merit; firstly; it is to be determined whether alleged termination was made, w.e.f. 1-9-98, or 23-9-98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14-8-98 of Brig. V.P. Singh who directed that the employment of CL/CLTS will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1-9-98 upto 23-9-98, his attendance on or after 1-9-98 on muster roll, and payment of his wages were made upto 23-9-98 was made. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was held on 18-9-98. How the management could have participated in hearing before 23-9-98, if the termination was not made before the said date. The retrenchment order No. E-4/TS/DL/F-2 dated 23-9-98, and retrenchment compensation cheque, appear to have been prepared subsequently, to remove legal defects. Had it not been so, the workman should have also been paid 23 days wages i.e. from 1-9-98 to 23-9-98 by the said cheque. This retrenchment order does not mention inclusion of 23 days wages. Two office memos dated 22-9-98 d 24-9-98 have

been filed which mention that the workman did not report to collect his cheque. These documents are office reports. No document is filed to show that,in fact, the workman had any notice to collect his cheque on 22-9-98 i.e. one day in advance of 23-9-98. The case of the management can not be believed that termination was made on 23-9-98 or substantial .compliance of section 25-F of the I.D. Act, 1947 was made. The workman, infact, was terminated w.e.f. 1-9-98 as per direction of Brig. V.P. Singh dated 14-8-98. It is also established that compliance of section 25-F of the I.D. Act, 1947 was not made, rendering the termination void-ab-initio.

10. The management failed to prove that Ram Behari Yadav was not entitled to temporary status as per Office Memo No. 4912/2/86-Estt© dated 7-6-88 and O.M. No. 51016/2/90-Estt.© Govt. of India. Ministry of Personal, P.G and Pension, Department of Personal and Training, New Delhi, dated 10-9-93. Policy decisions through these documents, rationalised working of the casual workers, particularly, in the matter of their wages and future regularisation. It provides for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after conferment of temporary status, such casual labourers, may be required to contribute to the General Provident Fund. Such workers may also be eligible for grant of festival advance, flood advance etc. on the same conditions as are applicable to temporary group 'D' employees. Para 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman had rendered continuous service for about 9 years and thus, was entitled to conferment of temporary status. Non issuance of formal order treating him casual labourer with temporary status, will not defeat his cause.

11. The submission of the management that there were no works to continue engagement of the workman can-not be accepted in face of averment in letter dated 14-8-98 of Brig. V. P. Singh, wherein it was directed to provide temporary employment on job basis and not to obtain signatures on muster roll. It implies availability of work. Even if there were seasonal works, the workman had preferential claim. No such order has been filed to give preference to the retrenched workmen. The action of the management is, thus, unjustified.

12. Admittedly, Ram Behari Yadav was a casual labour and he fulfilled eligibility criteria of being regularised. The management did not put any record to show availability of regular vacancies or absorption of casual labourers with temporary status, as was directed by Brig. V.P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating the services of the workman, on plea of surplusage without following statutory procedures and also benefits under section 25-F of the I.D. Act,1947.

13. As such, the reference is adjudicated in favour of the workman Ram Behari Yadav.. His termination is held void-ab-initio. He is also enlitled to reinstatement with full back wages.

14. Award as above.

LUCKNOW

31-12-2002 RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 441.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 140/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/13/98-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 441.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.140/2000) of the Central Govemment Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm and their workman, which was received by the Central Government on 8-1-2003.

[No. L-14012/13/98-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

Rudresh Kumar, Presiding Officer

I. D. No.140/2000 (Kanpur No.234/99)

Ref. No. L-14012/13/99/IR(DU) dated 21-7-1999

BETWEEN

Banwari Lal Yadav, C/o B.M.S. 32, Chakrata Road, Dehradun

AND

The Officer, Incharge, Military Dairy Farm,
Dehradun

AWARD

By order No. L-14012/13/98/IR(DU) dated 21-7-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub section (1) and section 2(A) of section 10 of the I.D. Act. 1947 (14 of 1947) referred this industrial dispute between Banwari Lal Yadav, C/o B.M.S.,32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No. Z-13011/1/97-CLS-II dated 21-8-2000, this case was transferred to this tribunal. The reference under adjudication is as under:

> "Whether the action of the Management Dairy Farm, Dehradun in terminating the services of Banwari Lal Yadav, Ex Casual Labour is Legal and Justified ? If not to what relief the workman is enetitled ?"

2. Facts are that the workman, Banwari Lal Yadav, was engaged by the Military Dairy Farm, Dehradun as a Casual labour w.e.f.13-9-1989. He worked continuously since then upto 31-8-98. In each year of his association as casual labour, he worked 240 days and more, thus, was in 'continuous service' as defined under section 25-B of the I.D. Act, 1947. He was engaged in perennial nature of work. His services were illegally dispensed with by oral order w.e.f. 1-9-98, without any notice, notice pay and retrenchment compensation etc, as is obligatory under section 25-F of the said Act.. It is also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go' was not followed. He was entitled to regularisation as per policy of the Government but the management teminated his services without observing prescribed procedures rendering termination order *void-ab-initio*. Relief of reinstatement with back wages have been claimed.

3. Aggrieved by his illegal retrenchment, the workman raised industrial dispute on 3-9-98 before the Asstt. Labour Commissioner(C),Dehradun. In compliance of the notice, the management appeared on 18-9-98 for conciliation as provided under section 12 of the I.D. Act. 1947, but no settlement could be reached, resulting into Failure Report, the basis of present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection is raised stating that correct name of the opposite party is 'Military Farm' and not Military Dairy Farm and so, the reference is incorrect and can not be adjudicated. Also, other preliminary objections have been raised that the Military Farm is not an 'industry', Banwari Lal Yadav, is not workman, as defined under the provisions of I.D. Act, and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity as this dispute should have been raised by the representative union. The management assailed the claim, stating that the work against which Banwari Lal Yadav was engaged had been of seasonal nature. On mechanization of the Military Farm, need of man power reduced and so, retrenchment of casual labourers became necessary. Only juniors were retrenched by giving notice and compensation etc. as provided under law. The workman was disengaged on 23-9-98 and not on 1-9-98 as alleged . He was directed to collect his compensation from the office but he preferred not to attend the office to collect his cheque. Later, the compensation was sent by post which was refused, thus, there is substantial compliance of section 25-F of the I.D. Act. The workman was surplus and his services were terminated, retaining his name in the register to be called for duties on availability of work.

5. A copy of letter No. A/88043/PE/Q/MF-4(GEN) dated 24th August, 1998 from V.P. Singh, Brig, DDG,MF is filed by the management to support its case. This letter mentions that a commitment has been made in presentation to COAS on 13-8-98 to reduce manpower by 01-9-98. In light of the said commitment, some actions were advised in the letter, to cease employment of CL/CLTS w.e.f. 1-9-98 after regularizing services of CLTS/CL to fill up vacancies as per revised PE and further, in future to provide temporary employment on job basis for seasonal nature of work. Taking of attendance on muster roll was also prohibited. The officer incharges were also made accountable for recovery and disciplinary action, in case any CL employed after 1-9-98.

6. The management has not disputed engagement of the workman as casual labourer or his continuous working upto 31-8-98. Also, specific denial has not been made assailing claim of the workman that he served 240 days and more in each year of his service. There is general denial of the claim without supporting documents. It is contended that he was surplus and so, was retrenched and his name is included in the list of workmen to be called for service in future on availability of work. Admittedly, retrenchment notice was not given before disengaging the workman,instead, he was directed to collect his compensation on 22-9-98 from the office. He preferred not to collect his cheque. Accordingly, he was terminated on 23-9-98, treating substantial compliance of section 25-F of the I.D. Act, 1947. Furthermore, his cheque was sent by registered post on 24-9-98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. The

plea of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. 'Military Farm is popularly called Military Dairy Farm and a workman, being illiterate, may commit such mistake. 'Military Farm' and Military Dairy Farm are not two distinct units to cause confusion to the management. The management, has filed written statement treating it to be Military Dairy Farm and also appeared in conciliation proceeding before ALC(C). Nothing is shown that any such objection was taken before the ALC (C) prior to submission of the Failure Report which formed basis of the reference. In the said background, this plea is purely technical, with no legal significance and thus, is rejected.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Military Diary Farm, is, to supply milk and other products to the soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature of activities are commercial. The management admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, is an 'industry' under the I.D. Act, 1947. The provisions of the I.D. Act, 1947 are applicable in the matter of casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I.D. Act, 1947. The O.M. No. 4914/2/86-Estt. Dated 7-6-88, formulated scheme for regularisation and grant of temporary status to the casual labourers which are in conformity with the provisions of the I.D. Act, 1947. The management has not produced any rule showing exclusions of the I.D. Act, 1947 in connection with casual workers. Thus, Banwari Lal Yadav, is a workman, and also is entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised by Banwari Lal Yadav in individual capacity, under section 2 -A of the I.D. Act, 1947, impugning his termination. He is not under obligation to approach through the union.

9. On merit; firstly; it is to be determined whether alleged termination was made , w.e.f. 1-9-98, or 23-9-98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14-8-98 of Brig. V.P. Singh who directed that the employment of CL/CLTS will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1-9-98 upto 23-9-98, taking of his attendance on or after 1-9-98 on muster roll, and payment of his wages were made upto 23-9-98. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was held on 18-9-98. How the management could have participated in hearing before 23-9-98, if the termination was not made before the said date. The retrenchment order No. E-4/TS/DL/F-2 dated 23-9-98, and retrenchment compensation cheque, appear to have been prepared subsequently, to remove legal defects. Had it not been so, the workman should have also been paid 23 days wages i.e. from 1-9-98 to 23-9-98 by the said cheque. This retrenchment order does not mention inclusion of 23 days wages. Two office memos dated 22-9-98 and 24-9-98 have been filed which mention that the workman did not report to collect his cheque. These documents are office reports. No document is filed to show that,in fact, the workman had any notice to collect his cheque on 22-9-98 i.e. one day in advance of 23-9-98. The case of the management can not be believed that termination was made on 23-9-98 or substantial compliance of section 25-F I.D. Act, 1947 was made. The workman, infact, was terminated w.e.f. 1-9-98 as per direction of Brig. V.P. Singh dated 14-8-98. It is also established that compliance of section 25-F of the I.D. Act, 1947 was not made, rendering the termination *void-ab-initio.*

10. The management failed to prove that Banwari Lal Yadav was not entitled to temporary status as per office Memo No. 4912/2/86-Estt© dated 7-6-88 and O.M. No. 51016/2/90-Estt.© Govt. of India, Ministry of Personal, P.G and Pension, Department of Personal and Training, New Delhi dated 10-9-93. Policy decisions through these documents, rationalised working of the casual workers, particularly, in the matter of their wages and future regularisation. It provides for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed any where within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after conferment of temporary status, such casual labourers, may be required to contribute to the General Provident Fund. Such workers may also eligible for grant of festival advance, flood advance etc. on the same conditions as are applicable to temporary group 'D' employees. Para 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman had rendered continuous service for about 9 years and thus, was entitled to conferment of temporary status. Non issuance of formal order treating him casual labourer with temporary status, will not defeat his cause.

11. The submission of the management that there were no works to continue engagement of the workman can not be accepted in face of averment in letter dated 14-8-98 of Brig. V.P.Singh, where in it was directed to provide temporary employment on job basis and not to obtain signatures on muster roll. It implies availability of work. Even if there were seasonal works, the workman had preferential claim. No such order has been filed to give

preference to the retrenched workmen. The action of the management is, thus, unjustified.

12. Admittedly, Banwari Lal Yadav was a casual labour and he fulfilled eligiblity criteria of being regularised. The management did not put any record to show availability of regular vacancies or absorption of casual labourers with temporary status, as was directed by Brig. V.P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating the services of the workman, on plea of surplusage without following statutory procedures and also benefits under section 25-F of the I.D. Act, 1947.

13. As such, the reference is adjudicated in favour of the workman, Banwari Lal Yadav. His termination is held *void-ab-initio*, he is entitled to reinstatement with full back wages.

14. Award as above.

LUCKNOW :
30-12-2002 RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 442.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 141/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/15/98-आई० आर० (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 442.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.141/2000) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm and their workman, which was received by the Central Govemment on 8-1-2003.

[No. L-14012/15/98-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT :

RUDRESH KUMAR, Presiding Officer

I.D. No.141/2000 (Kanpur No.235/99)

Ref. No. L-14012/15/99/IR(DU) dated 21-7-1999

BETWEEN

Shri Ram Singh, C/o B.M.S. 32, Chakrata Road, Dehradun

AND

The Officer, Incharge, Military Dairy Farm, Dehradun

AWARD

By order No. L-14012/15/98/IR(DU) dated 21-7-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub section (1) and section 2(A) of Section-10 of the I.D. Act. 1947 (14 of 1947) referred this industrial dispute between Shri Ram Singh, C/o B.M.S., 32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No. Z-13011/1/97-CLS-II dated 21-8-2000, this case was transferred to this tribunal. The reference under adjudication is as under:

> "WHETHER THE ACTION OF THE MANAGEMENT DAIRY FARM, DEHRADUN IN TERMINATING THE SERVICES OF SHRI RAM SINGH EX CASUAL LABOUR IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

2. Facts are that the workman, Shri Ram Singh, was engaged by the Military Dairy Farm, Dehradun as a casual labour w.e.f. 1-1-1987. He worked continuously since then upto 31-8-98. In each year of his association as casual labour, he worked for 240 days and more, thus, was in 'continuous service' as defined under section 25-B of the I.D. Act, 1947. He was engaged in perennial nature of work. His services were illegally dispensed with by oral order W.e.f. 1-9-98, without any notice or notice pay and retrenchment compensation etc. as is obligatory under section 25-F of the said Act. It is also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go' was not followed. He was entitled to regularisation as per policy of the Government but the management terminated his services without observing prescribed procedures rendering termination order *void-ab-initio*. Relief of reinstatement with back wages have been claimed.

3. Aggrieved by his illegal retrenchment, the workman raised industrial dispute on 3-9-98 before the Asstt. Labour Commissioner(C), Dehradun. In compliance of the notice,

the management appeared on 18-9-98 for conciliation as provided under section 12 of the I. D. Act. 1947, but settlement could not be reached, resulting into Failure Report, the basis of present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection is raised stating that correct name of the opposite party is 'Military Farm' and not Military Dairy Farm and so, the reference is incorrect and can not be adjudicated. Some other preliminary objections were also raised that the Military Farm is not an 'industry', Shri Ram Singh, is not workman, as defined under the provisions of I.D. Act, and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity as this dispute should have been raised by the representative union. The management assailed the claim, stating that the work against which Shri Ram Singh was engaged had been of seasonal nature. On mechanization of the Military Farm, need of man power reduced and so, retrenchment of casual labourers became necessary. Only juniors were retrenched by giving notice and compensation etc. as provided under law. The workman was disengaged on 23-9-98 and not on 1-9-98 as alleged. He was directed to collect his compensation from the office but he preferred not to attend the office to collect his cheque.Later, the compensation was sent by post which was refused, thus, there is substantial compliance of section 25-F of the I.D. Act. The workman was surplus and his services were terminated, retaining his name in the register to be called for duties on availability of work.

5. A copy of letter No. A/88043/PE/Q/MF-4(GEN) dated 24th August, 1998 from V. P. Singh, Brig, DDG, MF is filed by the management to support of case. This letter mentions that a commitment has been made in presentation to COAS on 13-8-98 to reduce manpower by 1-9-98. In light of the said commitment, some actions were advised in the letter, to cease employment of CL/CLTS w.e.f. 1-9-98 after regularizing services of CLTS/CL to fill up vacancies as per revised PE and further, in future to provide temporary employment on job basis for seasonal nature of work. Taking attendance on muster roll was also prohibited. The officer incharges were also made accountable for recovery and disciplinary action, in case any CL employed after 1-9-98.

6. The management has not disputed engagement of the workman as casual labourer or his continuous working upto 31-8-98. Also, specific denial has not been made assailing claim of the workman that he served 240 days and more in each year of his service. There is general denial of the claim without supporting documents. It is contended that he was surplus and so, was retrenched and his name find reference in the list of workmen to be called for service in future on availability of work. Admittedly, retrenchment notice was not given before disengaging the workman, instead he was directed to collect his compensation on 22-9-98 from the office. He preferred not to collect his cheque. Accordingly, he was terminated on 23-9-98, treating substantial compliance of section 25-F I.D. Act, 1947. Furthermore, his cheque was sent by registered post on 24-9-98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. The plea of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. 'Military Farm' is generally called Military Dairy Farm and a workman, being illiterate may commit such mistake. 'Military Farm' and Military Dairy Farm are not two distinct units to cause confusion to the management. The management, has filed written statement treating it to be Military Dairy Farm and also appeared in conciliation proceeding before ALC(C). Nothing is shown that any such objection was taken before the ALC (C) prior to submission of the Failure Report which formed basis of the reference. In the said background, this plea is highly technical, with no legal significance and thus, is rejected.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Military Dairy Farm, is, to supply milk and other products to the soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature of activities are commercial. The management admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, is an 'industry' under the I.D. Act,1947. The provisions of the I.D. Act, 1947 are applicable in the matter of casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I.D. Act, 1947. The O.M. No. 4914/2/86-Estt. Dated 7-6-88, formulated scheme for regularisation and grant of temporary status to the casual labourers which are in conformity with the provisions of the I.D. Act, 1947. The management has not produced any rule showing exclusions of the I.D. Act, 1947 in connection with casual workers. Thus, Shri Ram Singh, is a workman, and also is entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised by Shri Ram Singh in individual capacity, under section 2 -A of the I.D. Act, 1947, impugning his termination. He is not under obligation to approach through the union.

9. On merit; firstly; it is to be determined whether alleged termination was made , w.e.f. 1-9-98, or 23-9-98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14-8-98 of Brig. V.P. Singh who directed that the employment of CL/CLTS

will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1-9-98 upto 23-9-98, taking of his attendance on or after 1-9-98 on muster roll, and payment of his wages were made upto 23-9-98. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was held on 18-9-98. How the management could have participated in hearing before 23-9-98, if the termination was not made before the said date. The retrenchment order No. E-4/TS/DL/F-2 dated 23-9-98, and retrenchment compensation cheque, appear to have been prepared subsequently, to remove legal defects. Had it not been so, the workman should have also been paid 23 days wages i.e. from 1-9-98 to 23-9-98 by the said cheque. This retrenchment order does not mention inclusion of 23 days wages. Two office memos dated 22-9-98 and 24-9-98 have been filed which mention that the workman did not report to collect his cheque. These documents are office reports. No document is filed to show that in fact, the workman had any notice to collect his cheque on 22-9-98 i.e. one day in advance of 23-9-98. The case of the management can not be believed that termination was made on 23-9-98 or substantial compliance of section 25-F I.D. Act,1947 was made. The workman, infact, was terminated w.e.f. 1-9-98 as per direction of Brig. V.P. Singh dated 14-8-98. It is also established that compliance of Section 25-F of the I.D. Act,1947 was not made, rendering the termination *void-ab-initio.*

10. The management failed to prove that Shri Ram Singh was not entitled to temporary status as per Office Memo No. 4912/2/86-Estt© dated 7-6-88 and O.M. No. 51016/2/90-Estt.© Govt. of India, Ministry of Personal, P.G and Pension, Department of Personal and Training, New Delhi dated 10-09-93. Policy decisions through these documents, rationalised working of the casual workers, particularly, in the matter of their wages and future regularisation. It provides for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed any where within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after conferment of temporary status, such casual labourers, may be required to contribute to the General Provident Fund. Such workers also becomes eligible for grant of festival advance, flood advance etc. on the same conditions as are applicable to temporary group 'D' employees. Para 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman had rendered continuous service for more than 11 years and thus was entitled to conferment of temporary status. Non issuance of formal order treating him casual labourer with temporary status will not defeat his cause.

11. The submission of the management that there were no works to continue engagement of the workman can not be accepted in face of averment in letter dated 14-8-98 of Brig. V.P.Singh, where in it was directed to provide temporary employment on job basis and not to obtain signatures on muster roll. It implies availability of work. Even if there was seasonal work, the workman had preferential claim. No such order has been filed to give preference to the retrenched workmen. The action of the management is, thus, unjustified.

12. Admittedly, Shri Ram Singh was a casual labour and he fulfilled eligible criteria of being regularised. The management did not put any record to show availability of regular vacancies or absorption of casual labourers with temporary status, as was directed by Brig. V.P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating the services of the workman, on the plea of surplusage without following statutory procedures and further not complying with the provisions of section 25-F of the I.D. Act.1947.

13. As such, the reference is adjudicated in favour of the workman, Shri Ram Singh. His termination is held *void-ab-initio* and he is entitled to reinstatement with full back wages.

14. Award as above.

LUCKNOW
30-12-2002 RUDRESH KUMAR, PresidingOfficer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 443.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 139/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/16/98-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S. O. 443.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.139/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm and their

workman, which was received by the Central Government on 8-1-2003.

[No. L-14012/16/98-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

PRESENT :

RUDRESH KUMAR, Presiding Officer

I.D. No.139/2000 (Kanpur No.233/99)

Ref. No. L-14012/16/99/IR(DU) dated 21-7-1999

BETWEEN

Shri Toffic, C/o B.M.S. 32, Chakrata Road, Dehradun

AND

The Officer, Incharge, Military Dairy Farm,

Dehradun

AWARD

By order No. L-14012/16/98/IR(DU) dated 21-7-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of Sub-Section (1) and Sub- Section 2(**A**) of section 10 of the I.D. Act. 1947 (14 of 1947) referred this industrial dispute between Shri Toffic, C/o B.M.S., 32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No. Z-13011/1/97-CLS-II dated 21-8-2000, this case was transferred to this tribunal. The reference under adjudication is as under :

> "WHETHER THE ACTION OF THE MANAGEMENT DAIRY FARM, DEHRADUN IN TERMINATING THE SERVICES OF SHRI TOFFIC EX CASUAL LABOUR IS LEGAL AND JUSTIFIED ? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED ?"

2. Facts are that the workman, Shri Toffic, was engaged by the Military Dairy Farm, Dehradun as a Casual labour w.e.f. 23-11-1988. He worked continuously since then upto 31-8-98. In each year of his association as casual labour, he worked 240 days and more, thus, was in 'continuous service' as defined under Section 25-B of the I.D. Act, 1947. He was engaged in perennial nature of work. His services were illegally dispensed with by oral order w.e.f. 1-9-98, without any notice, notice pay and retrenchment compensation etc. as is obligatory under Section 25-F of the said Act. It is also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go' was not followed. He was entitled to regularisation as per policy of the Government but the management terminated his services without observing prescribed procedures rendering termination order *void-ab-initio*. Relief of reinstatement with back wages have been claimed.

3. Aggrieved by his illegal retrenchment, the workman raised industrial dispute on 3-9-98 before the Asstt. Labour Commissioner (C), Dehradun. In compliance of the notice, the management appeared on 18-9-98 for conciliation as provided under Section 12 of the I.D. Act. 1947, but no settlement could be reached, resulting in to Failure Report, the basis of present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection is raised stating that correct name of the opposite party is 'Military Farm' and not Military Dairy Farm and so, the reference is incorrect and can not be adjudicated. Also, other preliminary objections have been raised that the Military Farm is not an 'industry', Shri Toffic, is not workman, as defined under the provisions of I.D. Act, and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity as this dispute should have been raised by the representative union. The management assailed the claim, stating that the work against which Shri Toffic was engaged had been of seasonal nature. On mechanization of the Military Farm, need of man power reduced and so, retrenchment of casual labourers became necessary. Only juniors were retrenched by giving notice and compensation etc. as provided under law. The workman was disengaged on 23-9-98 and not on 1-9-98 as alleged. He was directed to collect his compensation from the office but he preferred not to attend the office to collect his cheque. Later, the compensation was sent by post which was refused, thus, there is substantial compliance of Section 25-F of the I.D. Act. The workman was surplus and his services were terminated, retaining his name in the register to be called for duties on availability of work.

5. A copy of letter No. A/88043/PE/Q/MF-4(GEN) dated 24th August, 1998 from V.P. Singh, Brig, DDG, MF is filed by the management to support its case. This letter mentions that a commitment has been made in presentation to COAS on 13-8-98 to reduce manpower by 01-9-98. In light of the said commitment, some actions were advised in the letter, to cease employment of CL/CLTS w.e.f. 1-9-98 after regularizing services of CLTS/CL to fill up vacancies as per revised PE and further, in future to provide temporary employment on job basis for seasonal nature of work. Taking attendance on muster roll was also prohibited. The officer incharges were also made accountable for recovery

and disciplinary action, in case any CL employed after 1-9-98.

6. The management has not disputed engagement of the workman as casual labourer or his continuous working upto 31-8-98. Also, specific denial has not been made assailing claim of the workman that he served 240 days and more in each year of his service. There is general denial of the claim without supporting documents. It is contended that he was surplus and so, was retrenched and his name is included in the list of workmen to be called for service in future on availability of work. Admittedly, retrenchment notice was not given but before disengaging him he was directed to collect his compensation on 22-9-98 from the office. He preferred not to collect his cheque. Accordingly, he was terminated on 23-9-98, treating substantial compliance of Section 25-F I.D. Act, 1947. Furthermore, his cheque was sent by registered post on 24-9-98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. The plea of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. 'Military Farm is generally called Military Dairy Farm and a workman, being illiterate, may commit such mistake. 'Military Farm' and Military Dairy Farm are not two distinct units to cause confusion to the management. The management, has filed written statement treating it to be Military Dairy Farm and also appeared in conciliation proceeding before ALC(C). Nothing is shown that any such objection was taken before the ALC (C) prior to submission of the Failure Report which formed basis of the reference. In the said background, this plea is highly technical, with no legal significance and thus, is rejected.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Military Dairy Farm, is, to supply milk and other products to the soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature of activities are commercial. The management admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, is an 'industry' under the I.D. Act, 1947. The provisions of the I.D. Act, 1947 are applicable in the matter of casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I.D. Act, 1947. The O.M. No. 4914/2/86-Estt. Dated 7-6-88, formulated scheme for regularisation and grant of temporary status to the casual labourers which are in conformity with the provisions of the I.D. Act, 1947. The management has not produced any rule showing exclusions of the I.D. Act, 1947 in connection with casual workers. Thus, Shri Toffic, is a workman,and also is entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised by Shri Toffic in individual capacity, under section 2 -A of the I.D. Act, 1947, impugning his termination. He is not under obligation to approach through the union.

9. On merit; firstly; it is to be determined whether alleged termination was made , w.e.f. 1-9-98, or 23-9-98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14-8-98 of Brig. V.P. Singh who directed that the employment of CL/CLTS will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1-9-98 upto 23-9-98, taking of his attendance on or after 1-9-98 on muster roll, and payment of his wages were made upto 23-9-98. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was held on 18-9-98. How the management could have participated in hearing before 23-9-98, if the termination was not made before the said date. The retrenchment order No. E-4/TS/DL/F-2 dated 23-9-98, and retrenchment compensation cheque, appear to have been prepared subsequently, to remove legal defects. Had it not been so, the workman should have also been paid 23 days wages i.e. from 1-9-98 to 23-9-98 by the said cheque. This retrenchment order does not mention inclusion of 23 days wages. Two office memos dated 22-9-98 and 24-9-98 have been filed which mention that the workman did not report to collect his cheque. These documents are office reports. No document is filed to show that,in fact, the workman had any notice to collect his cheque on 22-9-98 i.e. one day in advance of 23-9-98. The case of the management can not be believed that termination was made on 23-9-98 or substantial compliance of section 25-F I.D. Act,1947 was made. The workman, infact, was terminated w.e.f. 1-9-98 as per direction of Brig. V.P. Singh dated 14-8-98. It is also established that compliance of section 25-F of the I.D. Act, 1947 was not made, rendering the termination void-ab-initio.

10. The management failed to prove that Shri Toffic was not entitled to temporary status as per office Memo No. 4912/2/86-Estt.© dated 7-6-88 and OM. No. 51016/2/ 90-Estt.© Govt. of India, Ministry of Personal, P.G. and Pension, Department of Personal and Training, New Delhi dated 10-9-93. Policy decisions through these documents, rationalised working of the casual workers, particuilarly, in the matter of their wages and future regularisation. It provides for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed any where within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after

conferment of temporary status, such casual labourers, may be required to contribute to the General Provident Fund. Such workers also made eligible for grant of festival advance, flood advance etc. on the same conditions as are applicable to temporary group 'D' employees. Para 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman had rendered continuous service for more than 10 years and thus, was entitled to conferment of temporary status. Non issuance of formal order treating him casual labourer with temporary status, will not defeat his cause.

11. The submission of the management that there were no works to continue engagement of the workman can not be accepted in face of averment in letter dated 14-8-98 of Brig. V.P.Singh, where in it was directed to provide temporary employment on job basis and not to obtain signatures on muster roll. It implies availability of work. Even if there were seasonal works, the workman had preferential claim. No such order has been filed to give preference to the retrenched workmen. The action of the management is, thus, unjustified.

12. Admittedly, Shri Toffic was a casual labour and he fulfilled eligible criteria of being regularised. The management did not put any record to show availability of regular vacancies or absorption of casual labourers with temporary status, as was directed by Brig. V.P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating the services of the workman, on plea of surplusage without following statutory procedures and further not complying with the provisions of section 25-F of the I.D. Act, 1947.

13. As such, the reference is adjudicated in favour of the workman. Shri Toffic. His termination is held void-ab-initio and he is entitled to reinstatement with full back wages.

14. Award as above.

LUCKNOW
30-12-2002 RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 444.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 146/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/34/99-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 444.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.146/2000) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm and their workman, which was received by the Central Government on 8-1-2003.

[No. L-14012/34/99-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR

Presiding Officer

I.D. No.146/2000 (Kanpur No.240/99)

Ref. No. L-14012/34/99/IR(DU) dated 3-8-1999

Between

Ram Bipat, C/o B.M.S. 32, Chakrata Road, Dehradun

And

The Officer, Incharge, Military Dairy Farm,

Dehradun

AWARD

By order No. L-14012/34/99/IR(DU) dated 3-8-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of Sub section (1) and section 2(A) of section 10 of the I.D. Act.1947 (14 of 1947) referred this industrial dispute between Ram Bipat, C/o B.M.S., 32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No. Z-13011/1/97-CLS-II dated 21-8-2000, this case was transferred to this tribunal. The reference under adjudication is as under:

"WHETHER THE ACTION OF THE MANAGEMENT OF DAIRY FARM, DEHRADUN IN TERMINATING THE SERVICES OF RAM BIPAT EX-TEMP. STATUS CASUAL LABOUR IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

2. Facts are: that the workman Ram Bipat, was engaged in the Military Dairy Farm, Dehradun, as a Casual labour w.e.f. 6-3-1987. He continuously worked since then upto 31-8-98. In each year of his association with Military Dairy Farm as casual labour, he worked 240 days and more, and had been in 'continuous service' as defined under section 25-B of the I.D. Act, 1947. He was engaged in regular nature of work. His services were illegally dispensed with w.e.f. 1-9-98, without any notice, notice pay and retrenchment compensation etc. as provided under section 25-F of the said Act. It is also alleged that junior workers were retained in preference to him, ignoring legal policy of 'first come last go'. He was entitled to regularisation as per policy of the Government. The action of the management in terminated him without observing rule of natural justice, is void-ab-initio and he entitled to reinstatement with back wages.

3. It is averred in the statement of claim that aggrieved by illegal retrenchment, he raised this industrial dispute on 3-9-98 before Asstt. Labour Commissioner (C),Dehradun, who issued notice to the Officer Incharge., In compliance of the notice, the management of Military Dairy Farm appeared before the Asstt. Labour Commissioner (C) on 18-9-98 for conciliation as provided under section 12 of the I.D. Act, 1947. However, settlement could not be reached and so, the present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection has been raised, stating that correct name of the opposite party is 'Military Farm' and not Military Dairy Farm and so, the reference is incorrect, liable to be returned without any adjudication. Some other preliminary objections have also been raised, that the Military Farm is not an 'industry', Ram Bipat is not a 'workman', as defined under Sec. 2(s) of the I.D. Act, 1947 and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity, as this dispute could be raised only by the representative union. The management has assailed the claim on merit, stating that Ram Bipat used to be engaged in seasonal nature of works. It is stated that on mechanization of the Military Farms, need of man power got reduced and so, decision was taken to reduce casual labourers, after regularising those eligible. Junior workmen were retrenched by giving notice pay and compensation etc. Ram Bipat was disengaged on 23-9-98 with notice to collect his compensation from the office. He preferred not to attend office for collecting his cheque. Since he was surplus, his service were terminated. However, he is retained in the register and shall be offered employment in future on availability of works.

5. A copy of letter No. A/88043/PE/Q/MF-4(GEN) dated 24th August, 1998 from V.P. Singh, Brig, DDG, MF is filed by the management in support of the case. This letter mentions that a commitment has been made in presentation to COAS on 13-8-98 to reduce manpower by 1-9-98. In light of the said commitment actions were advised in the said letter, to cease employment of CL/ CLTS w.e.f. 1-9-98 after regularising services of CLTS/ CL to fill up vacancies as per revised PE and further to provide temporary employment on job basis for seasonal nature of works. Taking of attendance in muster roll was also prohibited. The officer incharges were made accountable for recovery and disciplinary action, in case any CL employed after 1-9-98.

6. The management has admitted engagement of the workman as casual labourer and grant of temporary status on him. There are general denial of facts recited in the claim but documents have not been submitted to assail contentions of the workman. It is pleaded that he was surplus and so, was retrenched though his name retained in the list of workmen, to be called for service of workman. According to management the workman was directed to collect his compensation on 22-9-98 from the office, but he preferred not to collect his cheque. Accordingly, his services were terminated on 23-9-98, treating substantial compliance of section 25-F I.D. Act,1947. Furthermore, his cheque was sent by registered post on 24-9-98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. First plea, of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. Military Farm is generally called Military Dairy Farm and a workman, being illiterate, may commit such mistake. 'Military Farm' and 'Military Dairy Farm' are not two distinct units to cause confusion to the management. The management has filed written statement treating it to be Military Farm and also, appeared in conciliation proceeding before ALC (C). Nothing is shown that any such objection was taken before the ALC (C) prior to submission of the Failure Report, which formed basis of the present reference. In the said background, this plea is too technical and with no legal significance, and did not cause prejudice to the management.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Diary Farm is to supply milk and other products to the soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature

of activities are commercial. The management has admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, Dehradun is an 'industry' under the I.D. Act, 1947. The provisions of the I.D. Act, 1947 are applicable particularly in the matter of the casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I.D. Act, 1947. The O.M. No. 4914/2/86-Estt. Dated 7-6-88, formulated scheme for regularisation and grant of temporary status to the casual labourers is in conformity with the provisions of the I.D. Act, 1947. The management did not produce rules or orders showing exclusion of the I.D.Act, 1947. Thus, Ram Bipat being workman was entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised by him in individual capacity, under section 2-A of the I.D. Act, 1947, impugning his termination.

9. On merit, firstly: it is to be determined whether termination was affected, w.e.f. 1-9-98, or 23-9-98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14-8-98 of Brig. V. P. Singh who directed that the employment of CL/CLTS will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1-9-98 upto 23-9-98, his attendance on or after 1-9-98 was noted on muster roll and payment of his wages were made upto 23-9-98. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was held on 18-9-98. The management participated in the hearing on 18-9-98. How could hearing in the disputecould have been before 23-9-98, if termination was made on 1-9-98. The retrenchment order No. E-4/TS/DL/F-2 dated 23-9-98, office memos dated 22-9-98 and 24-9-98 showing non reporting to receive payments, were prepared subsequently, to remove legal defects. Had it not been so, the workman should have been paid 23 days wages i.e. from 1-9-98 to 23-9-98 by the said cheque. The retrenchment order does not mention inclusion of 23 days wages. This order directs workman to collect his compensation from the office. Two office memos dated 22-9-98, and 24-9-98 are filed which mention that the workman did not report to collect the cheque. No document is filed to show that the workman was given notice to collect his cheque, one day in advance of 23-9-98 i.e. on 22-9-98. The case of the management can not be believed that the services of the workman were terminated w.e.f. 23-9-98 or there was substantial compliance of section 25-F non I.D.Act, 1947. The workman, infact, was disengaged w.e.f. 1-9-98 as per direction of Brig. V.P. Singh dated 14-8-98. It is also established that compliance of section 25-F of the I.D. Act, 1947 was not made rendering his oral termination void-ab-initio.

10. The management has admitted that Ram Bipat had already acquired temporary status as per office memo No. 4912/2/86-Estt© dated 7-6-88 and O.M. No. 51016/2/90-Estt.© Govt. of India, Ministry of Personnel, P.G and Pension, Department of Personnel and Training, New Delhi dated 10-9-93. Policy decisions through these documents, rationalised working of the casual workers, particularly the matter of their wages and future regularisation. These circulars provide for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after conferment of temporary status, such casual labourers were required to contribute to the General Provident Fund. Such workers were also eligible for grant of festival advance, flood advance etc. on the same conditions as were applicable to temporary group 'D' employees. Para 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman was entitled to all the above said privileges and benefits.

11. Admittedly, Ram Bipat was a casual labourer with temporary status and was eligible to be regularised. The management did not submit any record to show non availability of regular vacancies justifying its action in not regularising him as was directed by Brig. V.P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating services of Ram Bipat. Also, compliance of section 25-F of the I.D.Act, is not made rendering discontinuation of the workman from service is void-tab-initio.

12. As such, the reference is adjudicated in favour of the workman Ram Bibat. He is entitled to reinstatement with full back wages.

13. Award as above.

LUCKNOW
27-12-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 445.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ (संदर्भ संख्या 147/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/35/99-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 445.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 147/2000) of the Central Government Industrial Tribunal/Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm, and their workman, which was received by the Central Government on 08-01-2003.

[No. L-14012/35/99-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, LUCKNOW

PRESENT:

RUDRESH KUMAR,
Presiding Officer

I. D. NO. 147/2000 (KANPUR NO. 241/99)
REF. NO. L-14012/35/99-IR(DU) DATED 3-8-1999

BETWEEN

Raghubir Singh, C/o B.M.S. 32, Chakrata Road, Dehradun

AND

The Officer, Incharge, Military Dairy Farm, Dehradun

AWARD

By Order No. L-14012/35/99-IR(DU) dated 3.8.1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of section 10 of the I.D. Act, 1947 (14 of 1947) referred this industrial dispute between Raghubir Singh, C/o B.M.S., 32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No. Z-13011/1/97-CLS-II dated 21.8.2000, this case was transferred to this tribunal. The reference under adjudication is as under:

"Whether the action of the management of dairy farm, Dehradun in terminating the services of Raghubir Singh Ex-Temp. Status Casual Labour is legal and justified? If not, to what relief the workman is entitled?"

2. Facts are: that the workman, Raghubir Singh, was engaged in the Military Dairy Farm, Dehradun, as a Casual labour w.e.f. 1.11.86. He continuously worked since then upto 31.8.98. In each year of his association with Military Dairy Farm as casual labour, he worked 240 days and more, and had been in 'continuous service' as defined under section 25-B of the I.D. Act, 1947. He was engaged in regular nature of work. His services were illegally dispensed with w.e.f. 1.9.98, without any notice, notice pay and retrenchment compensation etc. as provided under section 25-F of the said Act., It is also alleged that junior workers were retained in preference to him, ignoring legal policy of 'first come last go'. He was entitled to regularisation as per policy of the Government. The action of the management in terminated him without observing rule of natural justice, is *void-ab-initio* and he is entitled to reinstatement with back wages.

3. It is averred in the statement of claim that aggrieved by illegal retrenchment, he raised this industrial dispute on 3.9.98 before Asstt. Labour Commissioner (C), Dehradun, who issued notice to the Officer Incharge. In compliance of the notice, the management of Military Dairy Farm appeared before the Asstt. Labour Commissioner (C) on 18.9.98 for conciliation as provided under section 12 of the I.D. Act., 1947. However, settlement could not be reached and so, the present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection has been raised, stating that correct name of the opposite party is 'Military Farm' and not 'Military Dairy Farm' and so, the reference is incorrect, liable to be retumed without any adjudication. Some other preliminary objections have also been raised, that the Military Farm is not an 'industry', Raghubir Singh is not a 'workman', as defined under 2(s) of the I.D. Act, 1947 and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity, as this dispute could be raised only by the representative union. The management has assailed the claim on merit, stating that Raghubir Singh used to be engaged in seasonal nature of works. It is stated that on mechanization of the Military Farms, need of man power got reduced and so, decision was taken to reduce casual labourers, after regularising those eligible. Junior workmen were retrenched by giving notice pay and compensation etc. Raghubir Singh was disengaged on 23-9-98 with notice to collect his compensation from the office. He preferred not to attend office for collecting his cheque. Since he was surplus, his

service were terminated. However, he is retained in the register and shall be offered employment in future on availability of works.

5. A copy of letter No. A/88043/PE/Q/MF-4(GEN) dated 24th August, 1998 from V.P. Singh, Brig, DDG, MF is filed by the management in support of the case. This letter mentions that a commitment has been made in presentation to COAS on 13.8.98 to reduce manpower by 1.9.98. In light of the said commitment actions were advised in the said letter, to cease employment of CL/CLTS w.e.f. 1.9.98 after regularising services of CLTS/CL to fill up vacancies as per revised PE and further to provide temporary employment on job basis for seasonal nature of works. Taking of attendance in muster roll was also prohibited. The officer incharges were made accountable for recovery and disciplinary action, in case any CL employed after 1.9.98.

6. The management has admitted engagement of the workman as casual labourer and grant of temporary status on him. There are general denial of facts recited in the claim but documents have not been submitted to assail contentions of the workman. It is pleaded that he was surplus and so, was retrenched though his name retained in the list of workmen, to be called for service of workman. According to management the workman was directed to collect his compensation on 22.9.98 from the office, but he preferred not to collect his cheque. Accordingly, his services were terminated on 23.9.98, treating substantial compliance of section 25-F I.D. Act. 1947. Furthermore, his cheque was sent by registered post on 24.9.98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. First plea, of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. Military Farm is generally called Military Dairy Farm and a workman, being illitrate may commit such mistake. 'Military Farm' and 'Military Dairy Farm' are not two distinct units to cause confusion to the management. The management has filed written statement treating it to be Military Farm and also, appeared in conciliation proceeding before ALC (C). Nothing is shown that any such objection was taken before the ALC (C) prior to submission of the Failure Report, which formed basis of the present reference. In the said background, this plea is too technical and with no legal significance, and did not cause prejudice to the management.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Diary Farm is to supply milk and other products to the soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature of activities are commercial. The management has admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, Dehradun is an 'industry' under the I.D. Act, 1947. The provisions of the I.D. Act, 1947 are applicable particularly in the matter of the casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I. D. Act. 1947. The O.M. No. 4914/2/86-Estt. Dated 7.6.88, formulated scheme for regularisation and grant of temporary status to the casual labourers is in conformity with the provisions of the I.D. Act,1947. The management did not produce rules or orders showing exclusion of the I. D. Act, 1947. Thus, Raghubir Singh being workman was entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised by him in individual capacity, under section 2-A of the I.D. Act, 1947, impugning his termination.

9. On merit, firstly: it is to be determined whether termination was affected, w.e.f 1.9.98, or 23.9.98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1.9.98. This submission finds corroboration from the letter dated 14.8.98 of Brig. V.P. Singh who directed that the employment of CL/CLTS will cease w.e.f. 1.9.98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work or after 1.9.98 upto 23.9.98, his attendance on or after 1.9.98 was noticed on muster roll and payment of his wages upto made 23.9.98. It is noticeable that the industrial dispute was raised on 3.9.98 before ALC (C), and hearing was held on 18.9.98. The management participated in the hearing on 18.9.98. How could hearing in the dispute could have been before 23.9.98, if termination was made on 1.9.98. The retrenchment order No. E-4/TS/DL/F-2 dated 23.9.98, office memos dated 22.9.98 and 24.9.98 showing non reporting to receive payments, were prepared subsequently, to remove legal defects. Had it not been so, the workman should have been paid 23 days wages i.e. from 1.9.98 to 23.9.98 by the said cheque. The retrenchment order does not mention inclusion of 23 days wages. This order directs workman to collect his compensation from the office. Two office memos dated 22.9.98, and 24.9.98 are filed which mention that the workman did not report to collect the cheque. No document is filed to show that the workman was given notice to collect his cheque, one day in advance of 23.9.98 i.e. on 22.9.98. The case of the management cannot be believed that the services of the workman were terminated w.e.f. 23.9.98 or there was substantial compliance of section 25-F I.D. Act, 1947. The workman, infact, was disengaged w.e.f. 1.9.98 as per direction of Brig. V.P. Singh dated 14.8.98. It is also established that compliance of section 25-F of the I.D. Act, 1947 was not made rendering his oral termination *void-ab-initio*.

10. The management has admitted that Raghubir Singh had already acquired temporary status as per office memo No. 4912/2/86-Estt. C dated 7.6.88 and O.M.

No. 51016/2/90-Estt. Govt. of India, Ministry of Personel, P. G and Pension, Department of Personel and Training, New Delhi dated 10.9.93. Policy decisions through these documents, rationalised working of the casual workers, particularly the matter of their wages and future regularisation. These circulars provide for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after conferment of temporary status, such casual labourers were required to contribute to the General Provident Fund. Such workers were also eligible for grant of festival advance, flood advance etc. on the same conditions as were applicable to temporary group 'D' employees. Para 8 and 9 of this circular provide for regularisation of such casual workers with temporary status. The workman was entitled to all the above said privileges and benefits.

11. Admittedly, Raghubir Singh was a casual labourer with temporary status and was eligible to be regularised. The management did not submit any record to show non availability of regular vacancies justifying its action in not regularising him as was directed by Brig. V.P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating services of Raghubir Singh. Also, compliance of section 25-F of the I.D. Act, is not made rendering discontinuation from service as *void-ab-initio.*

12. As such, the reference is adjudicated in favour of the workman, Raghubir Singh. He is entitled to reinstatement with full back wages.

13. Award as above.

LUCKNOW
30.12.2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 446.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 137/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/47/98-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 446.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 137/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm, and their workman, which was received by the Central Government on 8-1-2003.

[No. L-14012/47/99-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR, Presiding Officer

I. D. NO. 137/2000(KANPUR NO.231/99)
REF. NO. L-14012/47/98IR(DU) DATED 22-4-1999

BETWEEN

Naresh Kumar, C/o B. M. S. 32, Chakrata Road, Dehradun

AND

The Officer, Incharge, Military Dairy Farm, Dehradun

AWARD

By order No. L-14012/47/98/IR(DU) dated 22-4-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the I.D. Act, 1947 (14 of 1947) referred this industrial dispute between Naresh Kumar, C/o B.M.S.,32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No.Z-13011/1/97-CLS-II dated 21.8.2000, this case was transferred to this tribunal.

The reference under adjudication is as under :

"WHETHER THE ACTION OF THE MANAGEMENT DAIRY FARM, DEHRADUN IN TERMINATING THE SERVICES OF NARESH KUMAR EX CASUAL LABOUR IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

2. Facts are that the workman, Naresh kumar, was engaged by the Military Dairy Farm, Dehradun, as a Casual labour w.e.f. 15-9-88. He worked continuously since then upto 31-8-98. In each year of his association as casual

labour, he worked for more than 240 days and thus, was in 'continuous service' as defined under section 25-B of the I.D. Act, 1947. He was engaged in perennial nature of work. His services were illegally dispensed with by oral order w.e.f. 1-9-98, without any notice or notice pay and retrenchment compensation etc. as is necessary under section 25-F of the said Act. It is also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go'. was not followed. He was entitled to regularisation as per policy of the Government but the management terminated his services without observing prescribed procedures rendering its order *void-ab-initio.* Relief of reinstatement with back wages have been claimed.

3. Aggrieved by his illegal retrenchment, the workman raised industrial dispute on 3-9-98 before the Asstt. Labour Commissioner (C), Dehradun. In compliance of notice, the management appeared on 18-9-98 for conciliation as provided under section 12 of the I.D. Act. 1947, but settlement could not be reached, resulting into failure report, the basis of present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection is raised stating that correct name of the opposite party is 'Military Farm' and not Military Dairy farm and so, the reference is incorrect and can not be adjudicated. Also, other preliminary objections have been raised that the Military Farm is not an 'industry.' Naresh Kumar, is not workman, as defined under the provisions of I.D. Act, and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity as this dispute should have been raised by the representative union. The management assailed the claim, stating that the work against which Naresh Kumar was engaged had been of seasonal nature. On mechanization of the Military Farm, need of man power reduced and so, retrenchment of casual labourers became necessary. Only juniors were retrenched by giving notice and compensation etc. as provided under law. The workman was disengaged on 23.9.98 and not on 1-9-98 as alleged . He was directed to collect his compensation from the office but he preferred not to attend the office to collect his cheque. Later, the compensation was sent by post which was refused, thus, there is substantial compliance of section 25-F of the I.D. Act. The workman was surplus and his services were terminated, retaining his name in the register to be called for duties on availability of work.

5. A copy of letter No. A/88043/PE/Q/MF-4(GEN) dated 24th August, 1998 from V.P. Singh, Brig, DDG, MF is filed by the management to support its case. This letter mentions that a commitment has been made in presentation to COAS on 13-8-98 to reduce manpower by 1-9-98. In light of the said commitment, some actions were advised in the letter, to cease employment of CL/CLTS w.e.f. 1-9-98 after regularizing services of CLTS/CL to fill up vacancies as per revised PE and further,in future to provide temporary employment on job basis for seasonal nature of work. Taking attendance on muster roll was also prohibited. The officer incharges were also made accountable for recovery and disciplinary action, in case any CL employed after 1-9-98.

6. The management has not disputed engagement of the workman as casual labourer w.e.f. 15-9-88 or his continuous working up to 31-8-98. Also, specific denial has not been made assailing claim of the workman that he served more than 240 days in each years of his service. There is general denial of the claim without supporting documents. It is contended that he was surplus and so, was retrenched and his name find reference in the list of workmen to be called for service in future on availability of work. Admittedly, retrenchment notice was not given before disengaging the workman, instead he was directed to collect his compensation on 22-9-98 from the office. He preferred not to collect his cheque. Accordingly, he was terminated on 23.9.98, treating substantial compliance of section 25-F I.D. Act,1947. Furthermore, his cheque was sent by registered post on 24-9-98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. The plea of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. 'Military Farm', is generally called Military Dairy Farm and a workman, being illiterate, may commit such mistake. 'Military Farm' and Military Dairy Farm are not two distinct units to cause confusion to the management. The management, has filed written statement treating it to be Military Dairy Farm and also appeared in conciliation proceeding before ALC(C). Nothing is shown that any such objection was taken before the ALC (C) prior to submission of the Failure Report which formed basis of the reference. In the said background, this plea is technical, has no legal significance and thus, rejected.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Military Dairy Farm, is, to supply milk and other products to the soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature of activities are commercial. The management admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, is an 'industry' under the I.D. Act, 1947. The provisions of the I.D. Act, 1947 are applicable in the matter of casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I.D.

Act, 1947. The O.M. No. 4914/2/86-Estt. Dated 7.6.88, formulated scheme for regularisation and grant of temporary status to the casual labourers which are in conformity with the provisions of the I.D. Act, 1947. The management has not produced any set of rules showing exclusions of the I.D. Act, 1947 in connection with casual workers. Thus, Naresh Kumar, is a workman, and also is entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised by Naresh Kumar in individual capacity, under section 2-A of the I.D. Act, 1947, impugning his termination. He is not under obligation to approach through the union.

9. On merit, firstly; it is to be determined whether alleged termination was affected, w.e.f. 1.9.98, or 23.9.98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14.8.98 of Brig. V.P. Singh who directed that the employment of CL/CLTS will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1.9.98 upto 23-9-98, his attendance on or after 1-9-98 on muster roll was taken or payment of his wages were made upto 23-9-98. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was held on 18.9.98. How the management could participate in hearing before 23-9-98, if the termination was not made prior to the said date. The retrenchment order No. E-4/TS/DL/F2 dated 23-9-98 accompanied with 15 days salary and retrenchment compensation by cheque, appears to have been prepared subsequently, to remove legal defects. Had it not been so, the workman should have also been paid 23 days wages i.e. from 1.9.98 to 23-9-98 by the said cheque. This retrenchment order does not mention inclusion of 23 days wages. Two office memos dated 22.9.98 and 23-9-98 have been filed which mention that the workman did not report to collect his cheque. These documents are office reports. No document is filed to show that.in fact, the workman had any notice to collect his cheque on 22.9.98 i.e. one day in advance of 23-9-98. The case of the management can not be believed that termination was made on 23-9-98 or substantial compliance of section 25-F I.D. Act,1947 was made. The workman, infact, was terminated w.e.f. 1-9-98 as per direction of Brig. V.P. Singh dated 14.8.98. It is also established that compliance of section 25-F of the I.D. Act, 1947 was not made by the management rendering the termination void-ab-initio.

10. The management failed to prove that Naresh Kumar was not entitled to temporary status as per office Memo No. 4912/2/86-Estt. dated 7-6-88 and O.M. No. 51016/2/90-Estt. Govt. of India, Ministry of Personel, P.G and Pension, Department of Personel and Training, New Delhi dated 10-9-93. Policy decisions through these documents, rationalised working of the casual workers, particularly, in the matter of their wages and future regularisation. It provides for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed any where within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after conferment of temporary status, such casual labourers, were required to contribute to the General Provident Fund. Such workers were also eligible for grant of festival advance, flood advance etc. on the same conditions as are applicable to temporary group 'D' employees. Para 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman rendered continuous service for more than 11 years and thus was entitled to conferment of temporary status. Non issuance of formal order to treat him casual labourer with temporary status will not defeat his cause.

11. The submission of the management that there was no work to engage the workman can not be accepted in face of averments in letter dated 14.8.98 of Brig. V.P.Singh, whereby it was directed to provide temporary employment on job basis and not to obtain signatures on muster roll. It implies availability of work. Even if there was seasonal works, the workman had preferential claim. No such order to give preference to the retrenched workmen has been filed. The action of the management is thus, unjustified.

12. Admittedly, Naresh Kumar was a casual labour and he fulfilled eligible criteria to be regularised. The management did not put any record to show availability of regular vacancies or absorption of casual labourers with temporary status, as was directed by Brig. V.P. Singh in his letter dated 14.8.98. Thus, the action of the management can not be justified in terminating the services of the workman, on the plea of surplusage without following statutory procedures and also provisions contained under section 25-F of the I.D. Act, 1947.

13. As such, the reference is adjudicated in favour of the workman, Naresh Kumar. His termination is held void-ab-initio. He is entitled to reinstatement with full back wages.

14. Award as above

LUCKNOW RUDRESH KUMAR, Presiding Officer
30-12-2002

नई दिल्ली, 8 जनवरी, 2003

का. आ. 447.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन नवल कैंटीन सर्विस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, मुम्बई के पंचाट

(संदर्भ संख्या सी जी आई टी. 2/99 आफॅ 99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/96/98-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S. O. 447.—In pursuance of Section 17 of the Industrial Disputes, Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/99 of 1999) of the Central Government Industrial Tribunal-cum-Labour Court, No. II, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Naval Canteen Service, and their workman, which was received by the Central Government on 08-01-2003.

[No. L-14012/96/98-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT

S. N. SAUNDANKAR
Presiding Officer

REFERENCE No. CGIT-2/99 of 1999)
EMPLOYERS IN RELATION TO THE MANAGEMENT OF THE GENERAL MANAGER, INDIAN NAVAL CANTEEN SERVICE

The General Manager,
Indian Naval Canteen Service,
Nofra, Navy Nagar,
Colaba, Mumbai 400005.

AND

Sh. Yeshwant Singh,
C/o Shiv Kumar,
Paan Bidi Shop,
Near Navy Nagar Bus Depot,
Colaba, Mumbai 400005.

APPEARANCES:

FOR THE EMPLOYER : Mr. R. L. Nerlekar
Advocate

FOR THE WORKMEN : Ms. K. N. Samant
Advocate

AWARD—Part-II

By Interim Award dtd. 28/8/01 this Tribunal held domestic inquiry conducted against the workman Singh was as per the Principles of Natural Justice and findings recorded by the inquiry officer are not perverse. Therefore in this Award it is to be seen whether the action of the management in imposing the punishment of compulsory retirement from service to the workman Singh is legal and justlfied.

2. In this context workman filed affidavit in lieu of Examination-in-Chief (Exhibit-47) and closed oral evidence vide purshis (Exhibit-49). Management however did not lead oral evidence vide purshis (Ex.-50)

3. Workman filed written submissions (Exhibit-51) with copies of rulings (Exhibit-53) and the management (Exhibit-52). On hearing the counsel and the written submissions, record my findings on the following issues for the reasons stated below :—

	Issues	Findings
3.	Whether the action of the management in imposing the punishment of compulsory retirement from service to Mr. Yashwant Singh Ex-service-man is legal and justified?	Yes
4.	If not, to what relief the workman is entitled to ?	As per order below

REASONS

4. At the threshold it is to be noted that by catena of Judgments it is established legal position that if the employees services are terminated after proper domestic inquiry held in accordance with the rules of Natural Justice and the conclusions arrived at the inquiry are not perverse, the Industrial Tribunal not to consider the propriety and the correctness of the said findings, therefore the point of punishment only survives.

5. Workman was charged vide chargeheet dtd. 2/5/91 for the allegations that the workman in collusion with one Vishwanathan sold/arranged to be sold canteen goods 225 ceiling fans in unauthorised manner to a non entitled personnel in the market with intention to make monetary gains by making false entries in the ledger regarding the sale of fans and misappropriated the I.N.C funds (management) amounting to Rs. 1,12,510, thereby as a salesman of the canteen run by the management showed, professional misconduct and lack of integrity unbecoming to the post of salesman.

6. Workman stated that punishment imposed compulsory retirement is too harsh and is couched on unseen words as post retiral benefits are in no way equal to the salary which he would have earned otherwise. He disclosed that he is 40 years old, put about 20-22 years unblemished service his old parents wife and children are dependant on him and that his daughter is of marriageable age and the other children are at the crucial stage of taking education and considering this the punishment imposed is harsh and disproportionate to the charge and that the inquiry officer had pointed out to take leniency as the act

did was not for monetary gains. I have gone through the record as a whole, It is seen along with workman one Vishwanathan was also chargesheeted and on proving the charge he was retired compulsorily for the same charge levelled against workman. It is therefore not that discrimination made by the management.

7. It is clear that the penalty imposed upon the employee must commensurate with the gravity of the misconduct and that any penalty disproprotionate to the gravity of misconduct would be violative of Article-14 of the Constitution of India. In "Ranjit Thakur V/s. Union of India (1987) 4 S.C.C. 611(AIR 1987 SC 2386)" their Lordships observed:—

"The question of choice and quantum of punishment is within the jurisdiction of the Tribunal (Court Martial) but the sentence has to suit the offence and the offender. It should not be viodictive or unduly harsh, it should not be so disproportionate to the offence to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as a part of the concept of judicial review would ensure that even on an aspect which is otherwise, within the exclusive power of the Tribunal, if the decision of the court even as to sentence is an outrageous defiance of logic, then sentence would not be immuned from correction. Irrationality and perversity are recognised grounds of judicial review."

8. So far 'misconduct' is concerned P. Ramanatha Aiyars Law Lexicon, Reprint Edition 1987 page 821 defines as follows:—

"The term 'misconduct' implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed, misconduct literally means wrong conduct or improper conduct, In usual parlance misconduct Means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law? Carelessness or abuse of discretion under an indefinite law, Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite misconduct in office may be defined as unlawful behavior or neglect by a public officer, by which the rights of a party have been affected."

9. Their Lordships of Supreme Court in State of Punjab and Ors. V/s. Ram Singh Ex-constable 1992 (4) SCC 54 pg. 59 ruled that even a single act of misconduct if found to be a gravest nature warrants dismissal. On perusal of the proved charges it is seen the workman committed an act amounting to misconduct lack of absolute integrity showing dishonesty to the Armed Forces Personnel Members including retired personnels who served the nation cannot be said to be minor misconducts.

10. While deciding the question as to whether the action of the employer is justified, considering the scope of Section 11-A of the Industrial Disputes Act his Lordships of Bombay High Court in Ahmedmiya Ahmedji C/o. Bharatiya Kamgar Sena V/s. Indian Hume Pipe Co. Ltd. & Ors. 1997 II CLR pg. 636 observed :—

"When inquiry is held unfair, while deciding the question as to whether the action of the employer is justified the court will keep in mind the genesis of the dispute which lead to the agitation of the workers."

In Syndicate Bank Ltd. V/s. Its workmen 1966 I LLJ pg.440. Their Lordships of the Apex Court observed :—

"The industrial tribunal should be very careful before it interferes with the orders made by the banks in discharge of their Managerial functions, and that findings of malafides should be reached by the tribunals only if there is sufficient and proper evidence in support of findings and that such findings should not be reached apriciously or on flimsy grounds."

11. True it is,while considering the punishment the past record is necessary to be looked into. Workman admits on receiving the letters from the management Sr. No. 1—6 at Exhibit-10. On perusal of these letters it is seen probation period of the workman was extended for a period of six months in the year 1982 on the charge of negligence in the performance of his duties as salesman. He was also warned for his absence. From this it is apparent that despite giving opportunity workman could not improve his conduct while discharging his duties as sales-man.

12. In Municipal Committee Bahadurgarh V/s. Krishnan Behari and Ors. AIR 1996 SC pg. 1249 Their Lordships held the misappropriation of Municipal Committees money Rs.1548.78 ps by falsifying the account was grave misconduct for which there cannot be any other punishment than dismissal. Further it is observed that any sympathy shown in such cases is totally uncalled for and opposed to public interest. Their Lordships observed the amount misappropriated may be small or large, it is the act of misappropriation that is relevant. In the case in hand price of goods is running in thousand . By doing this act employer lost confidence, therefore question of his reinstatement does not arise. Their Lardships of Apex-court in UP State Transport Corporation V/s. Mohanlal Gupta 2000 III CLR pg.407 ruled :—

"employee who has been found guilty of misappropriating thereby Corporation looses its confidence vis-a-vis the employee it will not be proper nor

fair on the part of the court to substitute the findings and confidence of the employer with that of its own in allowing reinstatement."

13. On going through the decisions referred to above the past record of the workman, punishment imposed by the employer under the circumstances cannot be said to be harsh and disproportionate. Therefore the action of the management in this context is totally legal and justified. Consequently workman is not entitled to any relief. Issues are therefore answered accordingly and hence the order:—

ORDER

The action of the management of Indian Naval Canteen Service Mumbai in imposing the punishment of compulsory retirement from services to Mr. Yeshwant Singh, Ex-salesman is legal and justified.

S.N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 448.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 122/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/101/98-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 448.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 122/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm, and their workman, which was received by the Central Government on 08-01-2003.

[No. L-14012/101/98-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR, Presiding Officer

I.D. No.122/2000 (Kanpur No.100/99)
Ref. No. L-14012/101/98/IR(DU) dated 22-4-1999

BETWEEN

Sakal Dev, C/o B.M.S. 32, Chakrata Road, Dehradun

AND

The Officer Incharge, Military Dairy Farm,

Dehradun

AWARD

By order No. L-14012/101/98/IR(DU) dated 22-4-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of Sub section (1) and sub-section 2 (A) of Section 10 of the I.D. Act. 1947 (14 of 1947) referred this industrial dispute between Sakal Dev, C/o B.M.S. 32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No.Z-13011/1/97-CLS-II dated 21.8.2000, this case was transferred to this tribunal.

The reference under adjudication is as under:

"WHETHER THE ACTION OF THE MANAGEMENT DAIRY FARM, DEHRADUN IN TERMINATING THE SERVICES OF SAKAL DEV EX CASUAL LABOUR IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

2. Facts are that the workman Sakal Dev was engaged by the Military Dairy Farm, Dehradun as a Casual labour w.e.f .3-4-1988. He worked continuously since then upto 31.8.98. In each year of his association as casual Labour, he worked 240 days and more, thus, was in continuous service' as defined under Section 25-B of the I.D. Act,1947. He was engaged in perennial nature of work. His services were illegally dispensed with by oral order w.e.f. 1-9-98, without any notice, notice pay and retrenchment compensation etc as is obligatory under Section 25-F of the said Act.. It is also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go' was not followed. He was entitled to regularisation as per policy of the Government but the management terminated his services without observing prescribed procedures rendering termination order void-ab-initio. Relief of reinstatement with back wages have been claimed.

3. Aggrieved by his illegal retrenchment, the workman raised industrial dispute on 3.9.98 before the Asstt. Labour Commissioner(C), Dehradun. In compliance of the notice, the management appeared on 18.9.98 for conciliation as provided under section 12 of the I.D. Act. 1947, but no settlement could be reached, resulting into Failure Report, the basis of present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection is raised stating that correct name of the

opposite party is 'Military Farm' and not Military Dairy Farm and so, the reference is incorrect and can not be adjudicated. Also other preliminary objections have been raised that the Military Farm is not an 'industry', Sakal Dev, is not workman, as defined under the provisions of I. D. Act, and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity as this dispute should have been raised by the representative union. The management assailed the claim, stating that the work against which Sakal Dev was engaged had been of seasonal nature. On mechanization of the Military Farm, need of manpower reduced and so, retrenchment of casual labourers became necessary. Only juniors were retrenched by giving notice and compensation etc. as provided under law. The workman was disengaged on 23-9-98 and not on 1-9-98 as alleged . He was directed to collect his compensation from the office but he preferred not to attend the office to collect his cheque. Later, the compensation was sent by post which was refused, thus, there is substantial compliance of section 25-F of the I.D. Act. The workman was surplus and his services were terminated, retaining his name in the register to be called for duties on availability of work.

5. A copy of letter No. A/88043/PE/Q/MF-4(GEN) dated 24th August, 1998 from V.P. Singh, Brig, DDG,MF is filed by the management to support its case. This letter mentions that a commitment has been made in presentation to COAS on 13-8-98 to reduce manpower by 1-9-98. In light of the said commitment, some actions were advised in the letter, to cease employment of CL/CLTS w.e.f. 1-9-98 after regularizing services of CLTS/CL to fill up vacancies as per revised PE and further, in future to provide temporary employment on job basis for seasonal nature of work. Taking of attendance on muster roll was also prohibited. The officer incharges were also made accountable for recovery and disciplinary action, in case any CL employed after 1-9-98.

6. The management has not disputed engagement of the workman as casual labourer or his continuous working upto 31-8-98. Also, specific denial has not been made assailing claim of the workman that he served 240 days and more in each year of his service. There is general denial of the claim without supporting documents. It is contended that he was surplus and so, was retrenched and his name is included in the list of workmen to be called for service in future on availability of work. Admittedly, retrenchment notice was not given before disengaging the workman. Instead, he was directed to collect his compensation on 22-9-98 from the office. He preferred not to collect his cheque. Accordingly, he was terminated on 23-9-98, treating substantial compliance of section 25-F I.D. Act, 1947. Furthermore, his cheque was sent by registered post on 24-9-98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. The plea of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. 'Military Farm' is popularly called Military Dairy Farm and a workman, being illiterate, may commit such mistake. 'Military Farm' and Military Dairy Farm are not two distinct units to cause confusion to the management. The management, has filed written statement treating it to be Military Dairy Farm and also appeared in conciliation proceeding before ALC(C). Nothing is shown that any such objection was taken before the ALC (C) prior to submission of the Failure Report which formed basis of the reference. In the said background, this plea is purely technical, with no legal significance and thus, is rejected.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Military Diary Farm, is, to supply milk and other products to the soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature of activities are commercial. The management admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, is an 'industry' under the I.D. Act, 1947. The provisions of the I.D. Act, 1947 are applicable in the matter of casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I.D. Act, 1947. The O.M. No. 4914/2/86-Estt. Dated 7-6-88, formulated scheme for regularisation and grant of temporary status to the casual labourers which are in conformity with the provisions of the I.D. Act, 1947. The management has not produced any rule showing exclusions of the I.D. Act, 1947 in connection with casual workers. Thus, Sakal Dev, is a workman and also is entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised by Sakal Dev in individual capacity, under section 2-A of the I.D. Act, 1947, impugning his termination. He is not under obligation to approach through the union.

9. On merit; firstly; it is to be determined whether alleged termination was made , w.e.f. 1-9-98, or 23-9-98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14-8-98 of Brig. V.P. Singh who directed that the employment of CL/CLTS will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1-9-98 upto 23-9-98, his attendance on or after 1-9-98 on muster roll, and payment of his wages were made upto 23-9-98 was made. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was field on 18-9-98. How the management could have participated in hearing before 23-9-98, if the termination

was not made before the said date. The retrenchment order No. E-4/TS/DL/F-2 dated 23-9-98, and retrenchment compensation cheque, appear to have been prepared subsequently, to remove legal defects. Had it not been so, the workman should have also been paid 23 days wages i.e. from 1-9-98 to 23-9-98 by the said cheque. This retrenchment order does not mention inclusion of 23 days wages. Two office memos dated 22-9-98 and 24-9-98 have been filed which mention that the workman did not report to collect his cheque. These documents are office reports. No document is filed to show that in fact, the workman had any notice to collect his cheque on 22-9-98 i.e. one day in advance of 23-9-98. The case of the management can not be believed that termination was made on 23-9-98 or substantial compliance of section 25-F I.D. Act, 1947 was made. The workman, infact, was terminated w.e.f. 1-9-98 as per direction of Brig. V. P. Singh dated 14-8-98. It is also established that compliance of section 25-F of the I.D. Act, 1947 was not made, rendering the termination void-ab-initio.

10. The management failed to prove that Sakal Dev was not entitled to temporary status as per office Memo No. 4912/2/86-Estt.© Dated 7-6-88 and O.M. No. 51016/2/90-Estt.© Govt. of India, Ministry of Personal, P.G and Pension, Department of Personal and Training, New Delhi dated 10-9-93. Policy decisions through these documents, rationalised working of the casual workers, particularly, in the matter of their wages and future regularisation. It provides for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed any where within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after conferment of temporary status, such casual labourers, may be required to contribute to the General Provident Fund. Such workers may also be eligible for grant of festival advance, flood advance etc. on the same conditions as are applicable to temporary group 'D' employees. Para 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman had rendered continuous service for about 10 years and thus, was entitled to conferment of temporary status. Non issuance of formal order treating him casual labourer with temporary status, will not defeat his cause.

11. The submission of the management that there were no works to continue engagement of the workman can not be accepted in face of averment in letter dated 14.8.98 of Brig. V. P. Singh, where in it was directed to provide temporary employment on job basis and not to obtain signatures on muster roll. It implies availability of work. Even if there were seasonal works, the workman had preferential claim. No such order has been filed to give preference to the retrenched workmen. The action of the management is, thus, unjustified.

12. Admittedly, Sakal Dev l was a casual labour and he fulfilled eligiblity criteria of being regularised. The management did not put any record to show availability of regular vacancies or absorption of casual labourers with temporary status, as was directed by Brig. V.P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating the services of the workman, on plea of surplusage without following statutory procedures and also benefits under section 25-F of the I.D. Act, 1947.

13. As such, the reference is adjudicated in favour of the workman Sakal Dev. His termination is held *void-ab-initio.* He is entitled to reinstatement with full back wages.

14. Award as above.

LUCKNOW
31-12-2002

RUDRESH KUMAR, Presiding Officer.

नई दिल्ली, 8 जनवरी, 2003

का. आ. 449.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम नयायालय, लखनऊ के पंचाट (संदर्भ संख्या 121/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/103/98-आई आर (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 449.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.121/2000) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm and their workman, which was received by the Central Government on 8-1-2003.

[No. L-14012/103/98-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR, Presiding Officer

I.D. No.121/2000 (Kanpur No.99/99)

Ref. No. L-14012/103/98/IR(DU) dated 22-4-1999

BETWEEN

Dinesh Kumar S/o Sh. Bhutto Prasad Yadav, C/o B.M.S. 32, Chakrata Road, Dehradun

And

The Officer Incharge, Military Dairy Farm, Dehradun

AWARD

By Order No. L-14012/103/98/IR(DU) dated 22-4-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of Sub-section (1) and Section 2(A) of Section 10 of the I.D. Act, 1947 (14 of 1947) referred this industrial dispute between Dinesh Kumar, C/o B.M.S., 32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide Order No. Z-13011/1/97-CLS-II dated 21-8-2000, this case was transferred to this tribunal. The reference under adjudication is as under :

> "Whether the action of the Management Dairy Farm, Dehradun in terminating the services of Dinesh Kumar Ex. Casual Labour is legal and justified ? If not, to what relief the workman is entitled ?"

2. Facts are that the workman, Dinesh Kumar, was engaged by the Military Dairy Farm, Dehradun as a Casual labour w.e.f. 05-07-1990. He worked continuously since then upto 31-8-98. In each year of his association as casual labour, he worked for more than 240 days and thus, was in 'continuous service' as defined under section 25-B of the I.D. Act, 1947. He was engaged in perennial nature of work. His services were illegally dispensed with by oral order w.e.f. 1-9-98, without any notice or notice pay and retrenchment compensation etc. as is obligatory under section 25-F of the said Act. It is also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go' was not followed. He was entitled to regularisation as per policy of the Government but the management terminated his services without observing prescribed procedures rendering termination order void-ab-initio. Relief of reinstatement with back wages have been claimed.

3. Aggrieved by his illegal retrenchment, the workman raised industrial dispute on 3-9-98 before the Asstt. Labour Commissioner(C), Dehradun. In compliance of notice, the management appeared on 18-9-98 for conciliation as provided under section 12 of the I.D. Act.1947, but settlement could not be reached, resulting into Failure Report, the basis of present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D. S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection is raised stating that correct name of the opposite party is 'Military Farm' and not Military Dairy Farm and so, the reference is incorrect and can not be adjudicated. Some other preliminary objections have been raised that the Military Farm is not an 'industry', Dinesh Kumar, is not workman, as defined under the provisions of I.D. Act, and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity as this dispute should have been raised by the representative union. The management assailed the claim, stating that the work against which Dinesh Kumar was engaged had been of seasonal nature. On mechanization of the Military Farm, need of man power reduced and so, retrenchment of casual labourers became necessary. Only juniors were retrenched by giving notice and compensation etc. as provided under law. The workman was disengaged on 23-9-98 and not on 1-9-98 as alleged. He was directed to collect his compensation from the office but he preferred not to attend the office to collect his cheque. Later, the compensation was sent by post which was refused, thus, there is substantial compliance of section 25-F of the I.D. Act. The workman was surplus and his services were terminated, retaining his name in the register to be called for duties on availability of work.

5. A copy of letter No. A/88043/PE/Q/MF-4 (GEN) dated 24th August, 1998 from V. P. Singh Brig., DDG. MF is filed by the management to support its case. This letter mentions that a commitment has been made in presentation to COAS on 13-8-98 to reduce manpower by 1-9-98. In light of the said commitment, some actions were advised in the letter, to cease employment of CL/CLTS w.e.f. 1-9-98 after regularizing services of CLTS/CL to fill up vacancies as per revised PE and further, in future to provide temporary employment on job basis for seasonal nature of work. Taking attendance on muster roll was also prohibited. The officer incharges were also made accountable for recovery and disciplinary action, in case any CL employed after 1-9-98.

6. The management has not disputed engagement of the workman as casual labourer w.e.f. 5-7-90 or his continuous working upto 31-8-98. Also, specific denial has not been made as sailing claim of the workman that he served 240 days and more in each year of his service. There is general denial of the claim without supporting documents. It is contended that he was surplus and so, was retrenched and his name find reference in the list of workmen to be called for service in future on availability of work. Admittedly, retrenchment notice was

not given before disengaging the workman, instead he was directed to collect his compensation on 22-9-98 from the office. He preferred not to collect his cheque. Accordingly, he was terminated on 23-9-98, treating substantial compliance of section 25-F I.D. Act, 1947. Furthermore, his cheque was sent by registered post on 24-9-98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. The plea of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. 'Military Farm, is generally called Military Dairy Farm and a workman, being illiterate, may commit such mistake. 'Military Farm' and Military Dairy Farm are not two distinct units to cause confusion to the management. The management, has filed written statement treating it to be Military Farm and also appeared in conciliation proceeding before ALC(C). Nothing is shown that any such objection was taken before the ALC (C) prior to submission of the Failure Report which formed basis of the reference. In the said background, this plea is technical, has no legal significance and thus, rejected.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Military Dairy Farm, is, to supply milk and other products to the soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature of activities are commercial. The management admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, is an 'industry' under the I.D. Act,1947. The provisions of the I.D. Act, 1947 are applicable in the matter of casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I.D. Act, 1947. The O.M. No. 4914/2/86-Estt. Dated 7-6-88, formulated scheme for regularisation and grant of temporary status to the casual labourers which are in conformity with the provisions of the I.D. Act, 1947. The management has not produced any set of rules showing exclusions of the I.D. Act, 1947 in connection with casual workers. Thus, Dinesh Kumar, is a workman and also is entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised by Dinesh Kumar in individual capacity, under section 2-A of the I.D. Act, 1947, impugning his termination. He is not under obligation to approach through the union.

9. On merit, firstly; it is to be determined whether alleged termination was affected, w.e.f. 1-9-98, or 23-9-98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14-8-98 of Brig. V.P. Singh who directed that the employment of CL/CLTS will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1-9-98 upto 23-9-98, his attendance on or after 1-9-98 on muster roll was taken or payment of his wages were made upto 23-9-98. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was held on 18-9-98. How could the management participate in hearing before 23-9-98 of the termination was not made before the said date. The retrenchment order No. E-4/TS/DL/F-2 dated 23-9-98 accompanied with 15 days salary and retrenchment compensation by cheque, appears have been prepared subsequently, to remove legal defects. Had it not been so, the workman should have also been paid 23 days wages i.e. from 1-9-98 to 23-9-98 by the said cheque. This retrenchment order does not mention inclusion of 23 days wages. Two office memos dated 22-9-98 and 23-9-98 have been filed which mention that the workman did not report to collect his cheque. These documents are office reports. No document is filed to show that, in fact, the workman had any notice to collect his cheque on 22-9-98 i.e. one day in advance of 23-9-98. The case of the management can not be believed that termination was made on 23-9-98 or substantial compliance of section 25-F I.D. Act,1947 was made. The workman, infact, was terminated w.e.f. 1-9-98 as per direction of Brig. V.P. Singh dated 14-8-98. It is also established that compliance of section 25-F of the I.D. Act, 1947 was not made by the management rendering the termination *void-ab-initio*.

10. The management failed to prove that Dinesh Kumar was not entitled to temporary status as per office Memo No. 4912/2/86-Estt© dated 7-6-88 and O.M. No. 51016/2/90-Estt.© Govt. of India, Ministry of Personal, P.G and Pension, Department of Personal and Training, New Delhi dated 10-9-93. Policy decisions through these documents, rationalised working of the casual workers, particularly, in the matter of their wages and future regularisation. It provides for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed any where within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after conferment of temporary status, such casual labourers, were required to contribute to the General Provident Fund. Such workers were also eligible for grant of festival advance, flood advance etc. on the same conditions as are applicable to temporary group 'D' employees. Para 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman rendered continuous service for more than 11 years and thus was entitled to conferment of temporary status. Non issuance of formal

order to treat him casual labourer with temporary status will not defeat his cause.

11. The submission of the management that there were no works to continue engagement of the workman can not be accepted in face of averments in letter dated 14-8-98 of Brig. V. P.Singh, whereby it was directed to provide temporary employment on job basis and not to obtain signatures on muster roll. It implies availability of work. Even if there was seasonal works, the workman had preferential claim. No such order to give preference to the retrenched workmen has been filed. The action of the management is thus, unjustified.

12. Admittedly, Dinesh Kumar was a casual labour and he fulfilled eligible criteria for regularisation. The management did not put any record to show availability of regular vacancies or absorption of casual labourers with temporary status, as was directed by Brig. V. P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating the services of the workman, on the plea of surplusage without following statutory procedures and further not complying with the provisions of section 25-F of the I.D. Act,1947.

13. As such, the reference is adjudicated in favour of the workman , Dinesh Kumar. His termination is held void-ab-initio. He is entitled to reinstatement with full back wages.

14. Award as above.

LUCKNOW
30-12-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 450.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 117/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/105/98-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 450.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.117/2000) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm and their workman, which was received by the Central Government on 8-1-2003.

[No. L-14012/105/98-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Rudresh Kumar

Presiding Officer

I.D. No.117/2000 (Kanpur No. 95/99)

Ref. No. L-14012/105/99/IR(DU) dated 22-4-1999

BETWEEN

Dinesh Kumar Yadav C/o B.M.S. 32, Chakrata Road, Dehradun

AND

The Officer Incharge, Military Dairy Farm, Dehradun

AWARD

By order No. L-14012/105/98/IR(DU) dated 22-4-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the I.D. Act.1947 (14 of 1947) referred this industrial dispute between Dinesh Kumar Yadav C/o B.M.S., 32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No. Z-13011/1/97-CLS-II dated 21-8-2000, this case was transferred to this tribunal. The reference under adjudication is as under :

> "Whether the action of the Management Dairy Farm, Dehradun in terminating the services of Dinesh Kumar Yadav, Ex. Casual Labour is Legal and Justified ? If not, to what relief the workman is enetitled ?"

2. Facts are that the workman, Dinesh Kumar Yadav was engaged by the Military Dairy Farm, Dehradun as a Casual labour w.e.f .1-10-1987. He worked continuously since then upto 31-8-98. In each year of his association as casual labour, he worked 240 days and more, thus, was in 'continuous service' as defined under Section 25-B of the I.D. Act, 1947. He was engaged in perennial nature of work. His services were illegally dispensed with by oral order w.e.f. 1-9-98, without any notice, notice pay and retrenchment compensation etc., as is obligatory under Section 25-F of the said Act. It is also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go' was not followed. He was entitled to regularisation as per policy of the Government

but the management terminated his services without observing prescribed procedures rendering termination order void-ab-initio. Relief of reinstatement with back wages have been claimed.

3. Aggrieved by his illegal retrenchment, the workman raised industrial dispute on 3-9-98 before the Asstt. Labour Commissioner (C), Dehradun. In compliance of the notice, the management appeared on 18-9-98 for conciliation as provided under Section 12 of the I.D. Act. 1947, but no settlement could be reached, resulting into Failure Report, the basis of present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection is raised stating that correct name of the opposite party is 'Military Farm' and not Military Dairy Farm and so, the reference is incorrect and can not be adjudicated. Also other preliminary objections have been raised that the Military Farm is not an 'industry', Dinesh Kumar Yadav is not workman, as defined under the provisions of I.D. Act, and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity as this dispute should have been raised by the representative union. The management assailed the claim, stating that the work against which Dinesh Kumar Yadav was engaged had been of seasonal nature. On mechanization of the Military Farm, need of man power reduced and so, retrenchment of casual labourers became necessary. Only juniors were retrenched by giving notice and compensation etc. as provided under law. The workman was disengaged on 23-9-98 and not on 1-9-98 as alleged. He was directed to collect his compensation from the office but he preferred not to attend the office to collect his cheque. Later, the compensation was sent by post which was refused, thus, there is substantial compliance of Section 25-F of the I.D. Act. The workman was surplus and his services were terminated, retaining his name in the register to be called for duties on availability of work.

5. A copy of letter No. A/88043/PE/Q/MF-4(GEN) dated 24th August, 1998 from V.P. Singh, Brig. DDG, MF is filed by the management to support its case. This letter mentions that a commitment has been made in presentation to COAS on 13-8-98 to reduce manpower by 01-9-98. In light of the said commitment, some actions were advised in the letter to cease employment of CL/CLTS w.e.f. 1-9-98 after regularizing services of CLTS/CL to fill up vacancies as per revised PE and further, in future to provide temporary employment on job basis for seasonal nature of work. Taking of attendance on muster roll was also prohibited. The officer incharges were also made accountable for recovery and disciplinary action, in case any CL employed after 1-9-98.

6. The management has not disputed engagement of the workman as casual labourer or his continuous working upto 31-8-98. Also, specific denial has not been made assailing claim of the workman that he served 240 days and more in each year of his service. There is general denial of the claim without supporting documents. It is contended that he was surplus and so, was retrenched and his name is included in the list of workmen to be called for service in future on availability of work. Admittedly, retrenchment notice was not given before disengaging the workman, instead, he was directed to collect his compensation on 22-9-98 from the office. He preferred not to collect his cheque. Accordingly, he was terminated on 23-9-98, treating substantial compliance of Section 25-F I.D. Act, 1947. Furthermore, his cheque was sent by registered post on 24-9-98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. The plea of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. 'Military Farm' is popularly called Military Dairy Farm and a workman, being illiterate, may commit such mistake. 'Military Farm' and Military Dairy Farm are not two distinct units to cause confusion to the management. The management, has filed written statement treating it to be Military Dairy Farm and also appeared in conciliation proceeding before ALC (C). Nothing is shown that any such objection was taken before the ALC (C) prior to submission of the Failure Report which formed basis of the reference. In the said background, this plea is purely technical, with no legal significance and thus, is rejected.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Military Dairy Farm, is, to supply milk and other products to the soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature of activities are commercial. The management admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, is an 'industry' under the I.D. Act, 1947. The provisions of the I.D. Act, 1947 are applicable in the matter of casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I.D. Act, 1947. The O.M. No. 4914/2/86-Estt. Dated 7-6-88, formulated scheme for regularisation and grant of temporary status to the casual labourers which are in conformity with the provisions of the I.D. Act, 1947. The management has not produced any rule showing exclusions of the I.D. Act, 1947 in connection with casual workers. Thus, Dinesh Kumar Yadav is a workman and also is entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised by Dinesh Kumar Yadav in individual capacity, under Section 2-A of the I.D. Act, 1947, impugning his termination. He is not under obligation to approach through the union.

9. On merit, firstly, it is to be determined whether alleged termination was made, w.e.f. 1-9-98, or 23-9-98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14-8-98 of Brig. V.P. Singh who directed that the employment of CL/CLTS will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1-9-98 upto 23-9-98, his attendance on or after 1-9-98 on muster roll, and payment of his wages were made upto 23-9-98. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was held on 18-9-98. How the management could have participated in hearing before 23-9-98, if the termination was not made before the said date. The retrenchment order No. E-4/TS/DL/F-2 dated 23-9-98, and retrenchment compensation cheque, appear to have been prepared subsequently, to remove legal defects. Had it not been so, the workman should have also been paid 23 days wages i.e. from 1-9-98 to 23-9-98 by the said cheque. This retrenchment order does not mention inclusion of 23 days wages. Two office memos dated 22-9-98 and 24-9-98 have been filed which mention that the workman did not report to collect his cheque. These documents are office reports. No document is filed to show that in fact, the workman had any notice to collect his cheque on 22-9-98 i.e. one day in advance of 23-9-98. The case of the management can not be believed that termination was made on 23-9-98 or substantial compliance of Section 25-F I.D. Act, 1947 was made. The workman, in fact, was terminated w.e.f. 1-9-98 as per direction of Brig. V.P. Singh dated 14-8-98. It is also established that compliance of Section 25-F of the I.D. Act, 1947 was not made, rendering the termination void-ab-initio.

10. The management failed to prove that Dinesh Kumar Yadav was not entitled to temporary status as per office Memo No. 4912/2/86-Estt© dated 7-6-88 and O.M. No. 51016/2/90-Estt© Govt. of India, Ministry of Personnel, P.G and Pension, Department of Personnel and Training, New Delhi dated 10-9-93. Policy decisions through these documents, rationalised working of the casual workers, particularly, in the matter of their wages and future regularisation. It provides for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after conferment of temporary status, such casual labourers, may be required to contribute to the General Provident Fund. Such workers may also be eligible for grant of festival advance, flood advance etc. on the same conditions as are applicable to temporary group 'D' employees. Para 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman had rendered continuous service for about 9 years and thus, was entitled to conferment of temporary status. Non-issuance of formal order treating him casual labourer with temporary status, will not defeat his cause.

11. The submission of the management that there were no works to continue engagement of the workman can not be accepted in face of averment in letter dated 14-8-98 of Brig. V. P.Singh, wherein it was directed to provide temporary employment on job basis and not to obtain signatures on muster roll. It implies availability of work. Even if there were seasonal works, the workman had preferential claim. No such order has been filed to give preference to the retrenched workmen. The action of the management is, thus, unjustified.

12. Admittedly, Dinesh Kumar Yadav was a casual labour and he fulfilled eligiblity criteria of being regularised. The management did not put any record to show availability of regular vacancies or absorption of casual labourers with temporary status, as was directed by Brig. V.P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating the services of the workman, on plea of surplusage without following statutory procedures and also benefits under section 25-F of the I.D. Act, 1947.

13. As such, the reference is adjudicated in favour of the workman. Dinesh Kumar Yadav. His termination is held void ab-initio, he is entitled to reinstatement with full back wages.

14. Award as above.

Lucknow
30-12-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 451.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 116/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/113/98-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 451.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No.116/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm and their workman, which was received by the Central Government on 8-1-2003.

[No. L-14012/113/98-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR, PRESIDING OFFICER

I.D. No.116/2000 (Kanpur No.94/99)

Ref. No. L-14012/113/99/IR(DU) dated 22-4-1999

Between

Shiv Bahadur Pal, C/o B.M.S. 32, Chakrata Road, Dehradun

And

The Office Incharge, Military Dairy Farm, Dehradun

AWARD

By order No. L-14012/113/98/IR(DU) dated 22-4-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and section 2(A) of section 10 of the I.D. Act.1947 (14 of 1947) referred this industrial dispute between Shiv Bahadur Pal, C/o B.M.S., 32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No. Z-13011/1/97-CLS-II dated 21-8-2000, this case was transferred to this tribunal. The reference under adjudication is as under :

> "Whether the action of the Management Dairy Farm, Dehradun in terminating the services of Shiv Bahadur Pal, Ex. Casual Labour is Legal and Justified ? If not, to what relief the workman is enetitled ?"

2. Facts are that the workman Shiv Bahadur Pal, was engaged by the Military Dairy Farm, Dehradun as a Casual labour w.e.f.6-12-1987. He worked continuously since then upto 31-8-98. In each year of his association as casual Labour, he worked 240 days and more thus, was in 'continuous service' as defined under Section 25-B of the I.D. Act, 1947. He was engaged in perennial nature of work. His services were illegally dispensed with by oral order w.e.f. 1-9-98, without any notice, notice pay and retrenchment compensation etc. as is obligatory under Section 25-F of the said Act. It is also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go' was not followed. He was entitled to regularisation as per policy of the Government but the management terminated his services without observing prescribed procedures rendering termination order void-ab-initio. Relief of reinstatement with back wages have been claimed.

3. Aggrieved by his illegal retrenchment, the workman raised industrial dispute on 3-9-98 before the Asstt. Labour Commissioner (C), Dehradun. In compliance of the notice, the management appeared on 18-9-98 for conciliation as provided under Section 12 of the I.D. Act.1947, but no settlement could be reached, resulting into Failure Report, the basis of present reference for adjudication.

4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection is raised stating that correct name of the opposite party is 'Military Farm' and not Military Dairy Farm and so, the reference is incorrect and can not be adjudicated. Also, other preliminary objections have been raised that the Military Farm is not an 'industry', Shiv Bahadur Pal, is not workman, as defined under the provisions of I.D. Act, and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity as this dispute should have been raised by the representative union. The management assailed the claim, stating that the work against which Shiv Bahadur Pal was engaged had been of seasonal nature. On mechanization of the Military Farm, need of manpower reduced and so, retrenchment of casual labourers became necessary. Only juniors were retrenched by giving notice and compensation etc. as provided under law. The workman was disengaged on 23-9-98 and not on 1-9-98 as alleged . He was directed to collect his compensation from the office but he perferred not to attend the office to collect his cheque. Later, the compensation was sent by post which was refused, thus, there is substantial compliance of section 25-F of the I.D. Act. The workman was surplus and his services were terminated, retaining his name in the register to be called for duties on availability of work.

5. A copy of letter No. A/88043/PE/Q/MF-4(GEN) dated 24th August,1998 from V.P. Singh, Brig, DDG, MF is filed by the management to support its case. This letter mentions that a commitment has been made in presentation to COAS on 13-8-98 to reduce manpower by 1-9-98. In light of the said commitment, some actions were advised in the letter, to cease employment of CL/CLTS w.e.f. 1-9-98 after regularizing services of CLTS/CL to fill up vacancies as per revised PE and further, in future to provide temporary employment on job basis for seasonal nature of work. Taking of attendance on muster roll was also prohibited.

The officer incharges were also made accountable for recovery and disciplinary action, in case any CL employed after 1-9-98.

6. The management has not disputed engagement of the workman as casual labourer or his continuous working upto 31-8-98. Also, specific denial has not been made assailing claim of the workman that he served 240 days and more in each year of his service. There is general denial of the claim without supporting documents. It is contended that he was surplus and so, was retrenched and his name is included in the list of workmen to be called for service in future on availability of work. Admittedly, retrenchment notice was not given before disengaging the workman, instead, he was directed to collect his compensation on 22-9-98 from the office. He preferred not to collect his cheque. Accordingly, he was terminated on 23-9-98, treating substantial compliance of Section 25-F I.D. Act, 1947. Furthermore, his cheque was sent by registered post on 24.9.98 which was not acknowledged.

7. Before adverting to discuss merit of the case, it seems appropriate to take up preliminary objections. The plea of the management that 'Military Farm' has been wrongly noted as 'Military Dairy Farm' and so, the reference is incompetent and defective, is misconceived. 'Military Farm, is popularly called Military Dairy Farm and a workman, being illiterate, may commit such mistake. 'Military Farm' and Military Dairy Farm are not two distinct units to cause confusion to the management. The management, has filed written statement treating it to be Military Dairy Farm and also appeared in conciliation proceeding before ALC(C). Nothing is shown that any such objection was taken before the ALC(C) prior to submission of the Failure Report which formed basis of the reference. In the said background, this plea is purely technical, with no legal significance and thus, is rejected.

8. The plea that the Military Farm is not an 'industry' is also misconceived. The aim and object of the Military Dairy Farm, is, to supply milk and other products to the soldiers, ex-soldiers and their family members etc. on payment, may be without profit motive. The nature of activities are commercial. The management admitted its function being 'quasi commercial' in reply to notice from the ALC (C). The Military Farms do not discharge sovereign functions of state. Thus, the Military Farm, is an 'industry' under the I.D. Act, 1947. The provisions of the I.D. Act, 1947 are applicable in the matter of casual labourers engaged by the Military Farm. The supporting evidence relied by the management also prove application of the I.D. Act, 1947. The O.M. No. 4914/2/86-Estt. dated 7-6-88, formulated scheme for regularisation and grant of temporary status to the casual labourers which are in conformity with the provisions of the I.D. Act, 1947. The management has not produced any rule showing exclusions of the I.D. Act, 1947 in connection with casual workers. Thus, Shiv Bahadur Pal, is a workman, and also is entitled to raise this dispute. Also, this Tribunal has jurisdiction to adjudicate the reference raised by Shiv Bahadur Pal in individual capacity, under Section 2-A of the I.D. Act, 1947, impugning his termination. He is not under obligation to approach through the union.

9. On merit firstly it is to be determined whether alleged termination was made w.e.f. 1-9-98 or 23-9-98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14-8-98 of Brig. V. P. Singh who directed that the employment of CL/ CLTS will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1-9-98 upto 23-9-98, his attendance on or after 1-9-98 on muster roll, and payment of his wages were made upto 23-9-98. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was held on 18-9-98. How the management could have participated in hearing before 23-9-98, if the termination was not made before the said date. The retrenchment order No. E-4/TS/ DL/F-2 dated 23-9-98 and retrenchment compensation cheque appear to have been prepared subsequently to remove legal defects. Had it not been so, the workman should have also been paid 23 days wages i.e. from 1-9-98 to 23-9-98 by the said cheque. This retrenchment order does not mention inclusion of 23 days wages. Two office memos dated 22-9-98 and 24-9-98 have been filed which mention that the workman did not report to collect his cheque. These documents are office reports. No document is filed to show that, in fact, the workman had any notice to collect his cheque on 22-9-98 i.e. one day in advance of 23-9-98. The case of the management can not be believed that termination was made on 23-9-98 or substantial compliance of Section 25-F, I.D. Act, 1947 was made. The workman, infact, was terminated w.e.f. 1-9-98 as per direction of Brig. V. P. Singh dated 14-8-98. It is also established that compliance of Section 25-F of the I.D. Act, 1947 was not made, rendering the termination void-ab-initio.

10. The management failed to prove that Shiv Bahadur Pal was not entitled to temporary status as per office Memo No. 4912/2/86-Estt.© dated 7.6.88 and O.M. No. 51016/2/90-Estt.© Govt. of India, Ministry of Personel, P.G and Pension, Department of Personnel and Training, New Delhi dated 10-9-93. Policy decisions through these documents, rationalised working of the casual workers, particularly, in the matter of their wages and future regularisation. It provides for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed any where within the recruitment unit/territorial circle on the basis of availability of work. These circulars

also provide that after rendering 3 years continuous service after conferment of temporary status, such casual labourers, may be required to contribute to the General Provident Fund. Such workers may also be eligible for grant of festival advance, flood advance etc. on the same conditions as are applicable to temporary group 'D' employees. Paras 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman had rendered continuous service for about 11 years and thus, was entitled to conferment of temporary status. Non- issuance of formal order treating him casual labourer with temporary status, will not defeat his cause.

11. The submission of the management that there were no works to continue engagement of the workman can not be accepted in face of averment in letter dated 14-8-98 of Brig. V. P. Singh, where in it was directed, to provide temporary employment on job basis and not to obtain signatures on muster roll. It implies availability of work. Even if there were seasonal works, the workman had preferential claim. No such order has been filed to give preference to the retrenched workmen. The action of the management is, thus, unjustified.

12. Admittedly, Shiv Bahadur Pal was a casual labour and he fulfilled eligiblity criteria of being regularised. The management did not put any record to show availability of regular vacancies or absorption of casual labourers with temporary status, as was directed by Brig. V.P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating the services of the workman, on plea of surplusage without following statutory procedures and also benefits under Section 25-F of the I.D. Act, 1947.

13. As such, the reference is adjudicated in favour of the workman, Shiv Bahadur Pal. His termination is held void-ab-initio, He is entitled to reinstatement with full back wages.

14. Award as above.

Lucknow 31-12-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2003

का. आ. 452.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री डेयरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 115/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-2003 को प्राप्त हुआ था।

[सं. एल-14012/114/98-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 8th January, 2003

S.O. 452.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (1947 of 1947), the Central Government hereby publishes the award (Ref. No.115/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Dairy Farm and their workman, which was received by the Central Government on 8-1-2003.

[No. L-14012/114/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR

PRESIDING OFFICER

I.D. No.115/2000 (Kanpur No. 93/99)

Ref. No. L-14012/114/99/IR(DU) dated 22-4-1999

BETWEEN

Telu Ram C/o B.M.S. 32, Chakrata Road, Dehradun

AND

The Officer Incharge, Military Dairy Farm, Dehradun

AWARD

By order No. L-14012/114/98/IR(DU) dated 22-4-1999, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of the I.D. Act, 1947 (14 of 1947) referred this industrial dispute between Telu Ram C/o B.M.S., 32, Chakrata Road, Dehradun and the Officer Incharge, Military Dairy Farm, Dehradun, for adjudication to CGIT-cum-Labour Court, Kanpur. Later, vide order No. Z-13011/1/97-CLS-II dated 21-8-2000, this case was transferred to this Tribunal. The reference under adjudication is as under :

> "Whether the action of the management dairy farm, Dehradun in terminating the services of Telu Ram ex casual labour is legal and justified? If not, to what relief the workman is entitled."

2. Facts are that the workman Telu Ram, was engaged by the Military Dairy Farm, Dehradun as a Casual labour w.e.f. 1-10-1987. He worked continuously since then upto 31-8-98. In each year of his association as casual labour, he worked 240 days and more, thus, was in 'continuous service' as defined under Section 25-B of the I.D. Act, 1947. He was engaged in perennial nature of work. His services were illegally dispensed with by oral order w.e.f. 1-9-98, without any notice, notice pay and retrenchment compensation etc. as is obligatory under section 25-F of the said Act. It is

also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go' was not followed. He was entitled to regularisation as per policy of the Government but the management terminated his services without observing prescribed procedures rendering termination order void-ab-initio. Relief of reinstatement with back wages have been claimed.

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4. The Military Dairy Farm, Dehradun through Capt. D.S. Rathore, Officer Incharge, contested the claim of the workman and filed written statement. A preliminary objection is raised stating that correct name of the opposite party is 'Military Farm' and not Military Dairy Farm and so, the reference is incorrect and can not be adjudicated. Also,other preliminary objections have been raised that the Military Farm is not an 'industry', Telu Ram, is not workman, as defined under the provisions of I.D. Act, and further, there is no industrial dispute to be resolved. The workman is not entitled to raise this dispute in personal capacity as this dispute should have been raised by the representative union.. The management assailed the claim, stating that the work against which Telu Ram was engaged had been of seasonal nature. On mechanization of the Military Farm, need of manpower reduced and so, retrenchment of casual labourers became necessary. Only juniors were retrenched by giving notice and compensation etc. as provided under law. The workman was disengaged on 23-9-98 and not on 1-9-98 as alleged. He was directed to collect his compensation from the office but he preferred not to attend the office to collect his cheque. Later, the compensation was sent by post which was refused, thus, there is substantial compliance of section 25-F of the I.D. Act. The workman was surplus and his services were terminated, retaining his name in the register to be called for duties on availability of work.

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raised by Telu Ram in individual capacity, under section 2-A of the I.D. Act, 1947, impugning his termination. He is not under obligation to approach through the union.

9. On merit; firstly; it is to be determined whether alleged termination was made, w.e.f. 1-9-98, or 23-9-98 as alleged by the management. According to the workman, he was not allowed to work w.e.f. 1-9-98. This submission finds corroboration from the letter dated 14-8-98 of Brig. V.P. Singh who directed that the employment of CL/CLTS will cease w.e.f. 1-9-98. Nothing is shown that this order was not complied by the Military Farm. Also, there is no evidence to show that the workman was permitted to work on or after 1-9-98 upto 23-9-98, his attendance on or after 1-9-98 on muster roll, and payment of his wages were made upto 23-9-98. It is noticeable that the industrial dispute was raised on 3-9-98 before ALC (C), and hearing was held on 18-9-98. How the management could have participated in hearing before 23-9-98, if the termination was not made before the said date. The retrenchment order No. E-4/TS/DL/F-2 dated 23-9-98, and retrenchment compensation cheque, appear to have been prepared subsequently, to remove legal defects. Had it not been so, the workman should have also been paid 23 days wages i.e. from 1-9-98 to 23-9-98 by the said cheque. This retrenchment order does not mention inclusion of 23 days wages. Two office memos dated 22-9-98 and 24-9-98 have been filed which mention that the workman did not report to collect his cheque. These documents are office reports. No document is filed to show that, in fact, the workman had any notice to collect his cheque on 22-9-98 i.e. one day in advance of 23-9-98. The case of the management can not be believed that termination was made on 23-9-98 or substantial compliance of Section 25-F of the I.D. Act, 1947 was made. The workman, infact, was terminated w.e.f. 1-9-98 as per direction of Brig. V.P. Singh dated 14-8-98. It is also established that compliance of section 25-F of the I.D. Act, 1947 was not made, rendering the termination void-ab-initio.

10. The management failed to prove that Telu Ram was not entitled to temporary status as per Office Memo No. 4912/2/8 6-Estt ©. dated 7-6-88 and O.M. No. 51016/2/90-Estt. ©. Govt. of India, Ministry of Personnel, P.G and Pension, Department of Personnel and Training, New Delhi dated 10-9-93. Policy decisions through these documents, rationalised working of the casual workers, particularly, in the matter of their wages and future regularisation. It provides for creation of additional regular posts, if necessary, in concurrence with the Ministry of Finance. The appended scheme with O.M. dated 10-9-93 provides conferment of 'temporary status' without reference to creation/availability of group 'D' posts. This also provides that workers with temporary status, may be deployed any where within the recruitment unit/territorial circle on the basis of availability of work. These circulars also provide that after rendering 3 years continuous service after conferment of temporary status such casual labourers, may be required to contribute to the General Provident Fund. Such workers may also be eligible for grant of festival advance, flood advance etc. on the same conditions as are applicable to temporary group 'D' employees. Para 8 & 9 of this circular provide for regularisation of such casual workers with temporary status. The workman had rendered continuous service for about 11 years and thus, was entitled to conferment of temporary status. Non issuance of formal order treating him casual labourer with temporary status, will not defeat his cause.

11. The submission of the management that there were no works to continue engagement of the workman can not be accepted in face of averment in letter dated 14-8-98 of Brig. V.P.Singh, wherein it was directed to provide temporary employment on job basis and not to obtain signatures on muster roll. It implies availability of work. Even if there were seasonal works, the workman had preferential claim. No such order has been filed to give preference to the retrenched workmen. The action of the management is, thus, unjustified.

12. Admittedly, Telu Ram was a casual labour and he fulfilled eligiblity criteria of being regularised. The management did not put any record to show availability of regular vacancies or absorption of casual labourers with temporary status, as was directed by Brig. V.P. Singh in his letter dated 14-8-98. Thus, the action of the management can not be justified in terminating the services of the workman, on plea of surplusage without following statutory procedures and also benefits under Section 25-F of the I.D. Act, 1947.

13. As such, the reference is adjudicated in favour of the workman, Telu Ram. His termination is held void-ab-initio, he is entitled to reinstatement with full back wages.

14. Award as above.

LUCKNOW

30-12-2002

RUDRESH KUMAR,
Presiding Officer.

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